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14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

In re GOOGLE INC. SHAREHOLDER)	Master File No. CV-11-04248-PJH
DERIVATIVE LITIGATION)	
)	SECOND AMENDED VERIFIED
)	CONSOLIDATED SHAREHOLDER
This Document Relates To:)	DERIVATIVE COMPLAINT
)	
ALL ACTIONS.)	
)	<u>DEMAND FOR JURY TRIAL</u>

**INTRODUCTION AND OVERVIEW OF THE AMENDMENTS
TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

1. This is a shareholder derivative action on behalf of nominal party Google, Inc. (“Google” or the “Company”) for damages and other relief. Defendants are Google’s controlling shareholders and senior most executives – defendants Eric E. Schmidt, Larry Page and Sergey Brin – and directors – defendants John L. Hennessy, K. Ram Shriram, Shirley M. Tilghman, L. John Doerr and Paul S. Otellini (together, the “defendants”).

2. As corporate fiduciaries, defendants, individually and collectively, owe Google a duty of loyalty (and good faith) to conduct the Company’s business and operations in accordance with the applicable federal laws. Under Delaware law, directors who breach their duty of loyalty may be held liable to the corporation for damages arising from their faithless acts and/or omissions.

3. The Second Amended Complaint alleges that defendants, individually and collectively, breached their fiduciary duty of loyalty by allowing Canadian online pharmacies to place ads for the sale of prescription drugs without a prescription on Google’s website in violation of the Federal Food, Drug, and Cosmetic Act (“FD&C Act”) and other laws. And, as a result of defendants’ disloyalty, in August 2011, Google paid \$500 million, as well as admitted to and accepted responsibility for violating 21 U.S.C. §331(a) and (d) and 21 U.S.C. §952, to resolve claims brought by the United States Department of Justice (“DOJ”).

4. On September 26, 2013, the Court granted defendants’ motion to dismiss (the “Order”) because the previous complaint did not adequately allege futility of demand. More particularly, the Court concluded that the previous complaint only alleged “that one director (Schmidt) is ‘interested,’ and one director (Tilghman) lacks independence.” Order at 14. Reasonable doubt as to defendant Schmidt’s disinterestedness existed because he admitted that he became aware of the illegal Canadian ads on Google’s website in around 2004. *Id.* at 10. Reasonable doubt that defendant Tilghman was independent from interested director Schmidt existed because of Tilghman’s “position as president of Princeton University, where Schmidt is an alumnus ‘who created a \$25 million endowment fund, and was a former trustee who exercised control over Tilghman’s compensation and employment.’” *Id.* at 13.

1 5. As to defendants Page and Brin, on the issue of disinterestedness, the Court
2 concluded that the previous complaint did not “identify any specific action or knowledge on the part
3 of either” of these defendants, *id.* at 9, and, “in order to raise a reasonable doubt that Page [or Brin]
4 was ‘disinterested,’” plaintiffs “must provide actual factual allegations that Page [or Brin] was aware
5 of the illegal ads.” *Id.* at 11. The Second Amended Complaint cures this defect by pleading, with
6 particularity, facts demonstrating that Page and Brin received emails from, and participated in
7 conversations with other top Google officials regarding Google’s advertising policy for online
8 pharmacies that gave them personal knowledge that online pharmacies were selling prescription
9 drugs without a prescription via Google’s website. *See* ¶¶6, 28-70, *infra*. Indeed, defendant Schmidt
10 received many of the same emails as defendants Page and Brin received and, understandably as a
11 result, had to admit his personal knowledge of the illegal Canadian ads during his September 21,
12 2011 testimony before the United States Senate Judiciary Committee.

13 6. For example, ¶¶49 and 60, allege that on October 21, 2003, defendants Page and Brin
14 received an email forwarding a copy of Drugstore.com’s press release. The Drugstore.com press
15 release described the dangers of Canadian pharmacies, stating:

16 While the problem of enforcing our existing laws against illegal pharmacies is
17 complicated, an immediate solution to the problem is very simple. ***Illegal***
18 ***pharmacies rely on the incredible amount of traffic generated by their***
19 ***advertisements on major Internet search engines, such as Google, MSN, and***
20 ***Yahoo.*** The first step in protecting public health and safety, drugstore.com
management states, is for the search engines to voluntarily stop accepting rogue
pharmacy ads. Until then, or until Congress forces search engines to stop accepting
such advertising, consumers are warned to be very cautious about ads for
prescription medications that sound too good to be true.

21 “It’s unfortunate that major search engines, which are trusted by the public, are
22 enabling rogue pharmacies to trick the public,” continued Neupert. “While
23 technology has effectively helped streamline the delivery of prescription drugs and
24 substantially lowered the cost of drugs, our public policy to safeguard the
25 transactions has not kept pace. ***We sincerely hope that Yahoo, MSN, Google, and***
other search engines do the right thing and refuse to carry these ads. If not, then
Congress needs to protect the public by making it unlawful to sell advertising space
to companies that provide illegal pharmacy services, such as re-importation, shipping
without a legitimate prescription, and misrepresentation.”

26 7. Taken together, the Second Amended Complaint’s factual allegations are sufficient to
27 raise a reasonable doubt as to Page and Brin’s disinterestedness, because, as the evidence shows, by
28 October 2003, each of them was aware of the illegal Canadian ads. Yet, when faced with this

1 illegality, they continued Google’s advertising policy regarding online pharmacies in a manner that
2 allowed Canadian online pharmacies to continue to sell prescription drugs illegally via Google’s
3 website. As a result, defendants Page and Brin, individually and collectively, breached their
4 fiduciary duty of loyalty by failing to conduct Google’s business in accordance with the applicable
5 laws. Thus, defendants Page and Brin are each “interested” because they each face a substantial
6 likelihood of liability for breaching their fiduciary duty of loyalty (and good faith). Order at 8-9.

7 8. Moreover, as a byproduct of the interestedness of Page, Brin and/or Page and Brin,
8 defendants Hennessy and Shriram lack independence for purposes of demand futility. A reasonable
9 doubt that defendants Hennessy and Shriram were independent from “interested” director Page or
10 “interested” director Brin exists because Hennessy and Shriram “‘have executive positions at
11 Stanford University,’ where Page and Brin are alumni, and because ‘Stanford has received over
12 \$14.4 million from Google since 2006.’” *Id.* at 12.

13 9. In sum, the Second Amended Complaint cures the pleading defects identified in the
14 Court’s September 26, 2013 Order. The factual allegations of the Second Amended Complaint,
15 when taken as true, raise a reasonable doubt the three directors (Schmidt, Page and Brin) are
16 “interested,” because each of them had personal knowledge of the illegal Canadian ads. *Id.* at 11,
17 14. The Second Amended Complaint’s allegations also raise a reasonable doubt that three directors
18 (Tilghman, Hennessy and Shriram) lack independence from one or more “interested” directors. *Id.*

19 10. Accordingly, a majority of the Google nine person Board of Directors (“Board”) is
20 not disinterested and/or independent. And, even if Page or Brin (but not both) are somehow deemed
21 disinterested for purposes of demand futility, a majority of the nine person Google Board still will
22 not be disinterested and/or independent. Therefore, a pre-suit demand upon the Google Board to
23 bring, let alone vigorously prosecute the derivative claims is futile and excused as a matter of law.

24 **INTRADISTRICT ASSIGNMENT**

25 11. A substantial portion of the misconduct challenged in this Second Amended
26 Complaint occurred in Santa Clara County. However, pursuant to the Court’s Related Case Order,
27 dated September 19, 2011, the case was transferred to the Oakland Division.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the actions brought by plaintiffs Patricia H. McKenna (Case No. CV-11-04248-PJH) and Avrohom Gallis (Case No. CV-11-04270-LHK) under 28 U.S.C. §1332(a)(1), because plaintiffs and defendants are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. These actions are not collusive actions designed to confer jurisdiction on a court of the United States that it would not otherwise have.

13. This Court has jurisdiction over the action brought by plaintiff James Clem (Case No. CV-11-04249-RMW) under Article III of the United States Constitution and 28 U.S.C. §1331 because the underlying wrongdoing results from violations of the FD&C Act, 21 U.S.C. §331(a) and (d), and the Controlled Substances Act, 21 U.S.C. §952. This Court has supplemental jurisdiction under 28 U.S.C. §1367(a) over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

14. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the courts of this District permissible under traditional notions of fair play and substantial justice.

15. Venue is proper in this Court under 28 U.S.C. §1391(a) because: (i) Google maintains its executive offices and principal place of business in this District; (ii) one or more of the defendants either resides in or maintains offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, and aiding and abetting in violation of fiduciary duties owed to Google, occurred in this District; and (iv) defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

THE PARTIES

16. Plaintiffs McKenna, Gallis and Clem purchased Google shares on May 18, 2005, November 5, 2007, and June 29, 2007, respectively. Each plaintiff has continuously held their Google shares since purchase and each plaintiff continues to own their Google shares. Plaintiffs McKenna, Gallis and Clem are citizens of the States of Pennsylvania, New York and California, respectively.

17. Nominal party Google is a Delaware corporation, with its executive offices located at 1600 Amphitheatre Parkway, Mountain View, CA 94043. Google is the world's largest Internet search engine and generates revenue primarily by delivering relevant, cost-effective online advertising. Google is a citizen of the State of California.

18. Defendant Page, a Google founder, has been a Google Director since September 1998. He has also served as the Company's Chief Executive Officer ("CEO") since April 4, 2011. Page previously served as Google's President, Products, from 2001 to April 3, 2011, CEO from 1998 to 2001, and Chief Financial Officer ("CFO") from 1998 to 2002. Page is a citizen of the State of California.

19. Defendant Brin, a Google founder, has been a Google Director since September 1998. Brin previously served as Google's President, Technology, from 2001 to April 3, 2011, and as the Company's President and Chairman from 1998 to 2001. Brin is a citizen of the State of California.

20. Defendant Schmidt has been a Google Director since 2001. He has also been the Executive Chairman of the Google Board since April 4, 2011. Schmidt previously served as Google's CEO from 2001 to 2011, and Chairman of the Google Board from 2001 to 2004 and 2007 to April 2011. The Court held that defendant Schmidt is "interested" because he was aware of the illegal Canadian ads. *See* Order at 10. Schmidt is a citizen of the State of California.

21. Defendant Hennessy has been a Google Director since 2004. Hennessy also serves or served as the President of Stanford University, where "interested" directors Page and Brin are alumni and Google has donated more than \$14.4 million since 2006. Hennessy is a citizen of the State of California.

22. Defendant Shriram has been a Google Director since 1998. Shriram is also on the board of trustees of Stanford University, where “interested” directors Page and Brin are alumni and Google has donated more than \$14.4 million since 2006. Shriram is a citizen of the State of California.

23. Defendant Tilghman has been a Google Director since 2005. Tilghman also serves or served as the President of Princeton University, where “interested” director Schmidt, an alumnus of Princeton University, created a \$25 million endowment fund and, as a former Trustee, exercised control over Tilghman’s compensation and employment. This Court held that defendant Tilghman lacks independence from “interested” director Schmidt. *See* Order at 13. Tilghman is a citizen of the State of New Jersey.

24. Defendant Doerr has been a Google Director since 1999. Doerr also served on the board of directors of Drugstore.com, when Drugstore.com’s CEO was urging Google to clamp down on illegal online pharmacy ads that were appearing on its website. ¶52, *infra*. Doerr is a citizen of the State of California.

25. Defendant Otellini has been a Google Director since 2004. Otellini is a citizen of the State of California.

AIDING AND ABETTING AND CONCERTED ACTION

26. In committing the wrongful acts particularized herein, defendants have pursued or joined in the pursuit of a common course of conduct, and have acted in concert with one another in furtherance of their common plan or design. In addition to the wrongful conduct particularized herein as giving rise to primary liability, defendants further aided and abetted and/or assisted each other in breach of their respective duties.

27. Each of the defendants aided and abetted and rendered substantial assistance in the wrongs detailed herein. In taking such actions to substantially assist the commission of the wrongdoing detailed herein, each defendant acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his, her, or its overall contribution to and furtherance of the wrongdoing.

**SCHMIDT, PAGE AND BRIN'S KNOWLEDGE
OF THE ILLEGAL CANADIAN ADS**

28. At all relevant times, defendants Schmidt, Page and Brin served as Google's top three executive officers. By virtue of their Class B share ownership, they also are Google's controlling shareholders.

29. As detailed below, the evidence shows that defendants Schmidt, Page and Brin became aware of the illegal Canadian ads by no later than October 2003, and when faced with this illegality, continued Google's advertising policy for online pharmacies in a manner that allowed Canadian online pharmacies to continue to sell prescription drugs without a prescription via Google's website.

30. As a result, defendants Schmidt, Page and Brin, who, as directors, owe Google a duty of loyalty to conduct the Company's business in accordance with federal law, face a substantial likelihood of liability to Google for damages arising from the illegal pharmacy ads. Thus, a reasonable doubt as to the disinterestedness of defendants Schmidt, Page and/or Brin, exists; and a pre-suit demand on them, individually or collectively, to bring the derivative claims is excused as a matter of law.

**Defendant Schmidt Is Interested Because
He Knew About the Illegal Canadian Ads**

31. Defendant Schmidt admitted on September 21, 2011, while testifying before the United States Senate Judiciary Committee, that he was aware of the illegal Canadian ads on Google's website, and that he acquired this knowledge around 2004. Specifically, when asked whether the online Canadian pharmacy ads that ultimately forced Google to enter into a Non-Prosecution Agreement with the DOJ, in which Google paid \$500 million and specifically admitted and accepted responsibility for violating 21 U.S.C. §§331(a) and (d) and 21 U.S.C. §952 "was the result of oversight or inadvertence, or were there some employees in the company that were doing this without your knowledge," defendant Schmidt answered, "well, certainly not without my knowledge." Defendant Schmidt also testified that he "first learned of the issue," *i.e.*, the illegal Canadian ads issue, around 2004.

1 32. Among other things, defendant Schmidt's admission was based on emails that he
2 received from other top ranking Google officials about the Company's advertising policy regarding
3 online pharmacies. Defendant Schmidt received the first of these emails in August 2003, and the
4 emails show that, although defendant Schmidt was aware of the illegal Canadian ads and that U.S.
5 consumers could purchase prescription drugs without a prescription on Google's website, he
6 continued Google's advertising policy for online pharmacies in a manner that allowed Canadian
7 online pharmacies to continue to illegally sell prescription drugs via Google's website. Defendants
8 Page and Brin received many of the same emails as defendant Schmidt received.

9 33. For example, on August 22, 2003, defendant Schmidt received an email from Regan
10 Hurley, Google's then Director of Northwest Region. The email summarized Hurley's conversation
11 with Drugstore.com during which Drugstore.com alerted Google to the illegality and risks associated
12 with permitting rogue pharmacies to advertise prescription drugs on Google's website. The email
13 stated, in relevant part, as follows:
14

15 Goal: Educate Google executives on the risks associated with the continued paid
16 sponsorship of rogue pharmacies

17 Multiple national agencies have declared the Importation process illegal and a risk to
18 US consumers. The key takeaways are:

19 ****Importation of medication is illegal***

20 *Risk of counterfeit product

21 *Risk of contaminated product

22 *Risk of expired or duplicative therapy

23 *Unregulated by both US and Canadian/Mexican Authorities (FDA and FDA
24 equivalent) as no consistent safety and quality controls exist for purchasing and
25 receipt of prescription medications

26 Agencies include:

27 *FDA· Federal Drug Administration

28 ****Violation of Food, Drug, and Cosmetic Act to import prescription product.***

 *Foreign product may not meet all the requirement [sic] for US approval, and thus
 qualifies as an unapproved product

 *Medications are frequently labeled incorrectly

1 *Extremely unlikely that a pharmacy could ensure all applicable legal
2 requirements are met

3 *Individuals and business that cause those shipments also violate the act and are
4 therefore civilly and criminally liable. (RX Depot store front issue cease and
5 desist)

6 34. On August 22, 2003, in response to Hurley's email regarding Drugstore.com's
7 critique of Google's policy regarding online pharmacy advertisers, defendant Schmidt emailed to
8 defendant Brin (and others), stating:

9 This is a request to not accept advertisers who are advertising items like viagra from
10 online pharmacies that may or may not be properly licensed. Please review the
11 request and let me know your thoughts.

12 Thanks eric

13 35. On October 21, 2003, defendant Schmidt received a copy of an email from Sheryl
14 Sandberg, Google's then Vice President of Global Online Sales & Operations to Alana Karen and
15 other top Google insiders, that further alerted him to the problems with Google's advertising policy
16 for online pharmacies. The email stated, in relevant part, as follows:

17 As I believe everyone is aware, there is a lot of concern about pharma policy
18 [Google's Internet pharmacy advertising policies]. I think we need the following
19 info pulled together. Please send to Alana and to me:

20 ****Revenue breakdown (Betsy, Eric) – what do we know about how much
21 revenue comes from pharma? How much is online vs. direct?***

22 *Who are our direct pharma customers (Maryann [Belliveau])? Are they approved
23 by the NABP? (Is prescriptiondrugs.com approved?)

24 *What is the complete list of pharma companies that are approved by the NABP
25 (Alana [Karen])?

26 *If we wanted to tighten up but not go all the way to approved by NABP what are
27 the options (Alana [Karen])?

28 *Alana [Karen] – please check with legal and if they are ok, ***please have someone
go to a good sample of our online advertisers and try to buy vicodin or something
similar that you need a prescription for. Have them take notes on their
experience and see if they ask for prescription.*** Not sure if you have to go all the
way to purchase to answer the question. Better not to.

36. On October 21, 2003, defendant Schmidt received another email from Sandberg
forwarding to Schmidt a description of Google's purported current advertising policy for online

1 pharmacies (the “pharma” policy) and a potential future pharma policy. The email stated, in relevant
2 part, as follows:

3 Current Pharma Policy

4 We allow the advertisement of online pharmacies ONLY IF they require a
5 prescription or a doctor’s consultation. If advertiser will sell prescription drugs
6 without prescription or doctor’s consultation, we disapprove.

7 *This includes foreign pharmacies

8 *Pharmaceutical comparison or finder Sites are judged by same criteria

9 We will not allow the advertisement of pharmaceutical drugs that are not yet
10 approved by FDA such as Cialis and Levitra.

11 We do not allow pharmaceutical advertising to target the UK. Also stricter policies
12 in Japan.

13 Potential Pharma Policy

14 We will not allow the advertisement of online pharmacies unless approved by
15 Verified Internet Pharmacy Practice Sites (VIPPS) program of NABP (National
16 Association of Boards of Pharmacy). If there are reciprocal approval boards for
17 Internet sites in other countries, we will approve sites approved by those boards as
18 well.

19 *There are few International boards that have approved Internet sites as of yet

20 *Note: Current best way to do this is to block all keywords which effectively blocks
21 non-pharma related ads and pharmaceutical companies themselves until we have
22 technical fix.

23 Unlicensed question

24 To be VIPPS certified, a pharmacy must comply with the licensing and inspection
25 requirements of their state and each state to which they dispense pharmaceuticals.

26 Backing into this question, ‘unlicensed pharmacies’ are not necessarily complying
27 with the licensing and inspection requirement of their state and each state to which
28 they dispense pharmaceuticals.

I think it is safe to say that we have been accepting sites that do not necessarily meet
those requirements.

Former Data Pull info

REDACTED

REDACTED

1 37. On October 22, 2003, defendant Schmidt received an email from Mary Ann
2 Belliveau, Google's then Vertical Market Manager for Healthcare, pointing out that Google's current
3 "pharma" policy allows online pharmacies advertising with Google to sell prescription drugs without
4 a prescription. The email stated, in relevant part, as follows:

5 Just to avoid any confusion – Sheryl (Sandberg) is talking about "Online
6 Pharmacies" not pharmaceutical companies (which we subcategorized as "pharma").
7 So we're talking about online pharmacies like www.fastestrx.com not drug
8 manufacturers like Pfizer and Novartis.

9 "Rogue" online pharmacies generally fall into two categories –

10 A) Canadian Pharmacies selling discounted drugs into the US market. Some press is
11 positive i.e. senior citizens who have no drug coverage and can save money buying
12 these drugs from Canada. Some press is negative (counterfeit drugs, safety issues)

13 B) US online pharmacies charging high prices for prescription drugs (mostly diet
14 pills, pain killers and erectile dysfunction medication). Most press on US online
15 pharmacies is negative and escalating quickly.

16 I'll try to address most of Sheryl's questions. This is obviously a thorny subject and
17 the inability of our government to police the rogue pharmacies puts us in an awkward
18 position.

19 1) Betsy and Eric N started this project when Eric, Regan and I met with
20 drugstore.com – REDACTED

21 2) Eric N can send you a full list of direct and online pharmacy clients (there are
22 many and the names and urls change constantly). Most of these advertisers are not
23 VIPPS approved (see VIPPS approved list below). We do work with several VIPPS
24 approved clients currently – i.e. drugstore.com, medcohealth.com – but they
25 currently advertise other areas of their business (over the counter products, content).
26 Currently, the VIPPS approved clients like drugstore.com cannot compete with the
27 CPCs of the "rogue pharmacies" who sell drugs directly online and have a totally
28 different back end metric (CPCs are too high – shutting out the VIPPS pharmacies).

3) VIPPS approved list <http://www.nabp.net/vipps/consumerllistall.asp>

Detail Web Business Name Website Address

accuratepharmacy.com www.accuratepharmacy.com

AdvanceRx.com www.AdvanceRx.com

Anthem Prescription www.anthemprescription.com

Caremark Inc. www.rxrequest.com

elckpharmacy.com www.clickpharmacy.com

CVS Washington, Inc., dba CVS.com www.cvs.com

1 drugstore.com WWW.drugstore.com

2 Express Pharmacy Services/Eckerd.com www.Eckerd.com

3 Familymeds.com www.Familymeds.com

4 Medco Health Solutions, Inc. www.medcohealth.com

5 NCS Healthcare dba Care For Life www.careforlife.com

6 RxWEST Pharmacy www.rxwest.com

7 Tel-Drug, Inc./CIGNA www.teldrug.com

8 walgreens.com, Inc. www.walgreens.com

9 4) If we wanted to tighten up but not go all the way we could refuse advertising for
10 controlled substances (the online sale of narcotics is obviously causing the most
11 problems). However, this would be very difficult to monitor as the list is long and
12 would have to include the generic names of these drugs. It also would address only
13 part of this issue and we would still face potential criticism in other areas – i.e.
14 counterfeit drugs, watered down drugs, etc.

15 ***5) You absolutely can buy vicodin, valium, xanax from these advertisers without
16 seeing a live doctor. It's very easy and it's been done by numerous reporters. Most
17 of these advertisers are not shy about what they're doing [http://www. google.com/
18 search?sourceid=navclient&ie=UTF-8&oe=UTF-8&q=pain+killers](http://www.google.com/search?sourceid=navclient&ie=UTF-8&oe=UTF-8&q=pain+killers).***

19 Please. call me if you have any questions

20 Thanks, Mary Ann

21 38. As result of the October 21 and 22, 2003 emails, defendant Schmidt knew, among
22 other things, that online pharmacies advertising on Google were selling prescription drugs without a
23 prescription, and that Google users could buy Vicodin, Valium and Xanax from Google advertisers
24 without a prescription and without even seeing a doctor.

25 39. A few days later, on October 27, 2003, defendant Schmidt received yet another email
26 discussing the fact that Google's official policy of not allowing pharmacies to advertise on Google if
27 they sold prescription drugs without a prescription was a sham and that the only requirement that
28 Google imposed on Internet pharmacies was that they claim to require a prescription. The
October 27, 2003 email from Sandberg, Google's then Vice President of Global Online Sales &

1 Operations, sent via emg@google.com, the email listserv for the Google executive management
2 group that includes Schmidt, Page and Brin, stated, in relevant part, as follows:

3 I believe pharma policy may be a topic in today's EMG meeting.

4 Our current policy is that we allow the advertisement of online pharmacies, both
5 domestic and foreign, only if the site claims to require a prescription. Pharmaceutical comparison or finder sites are judged by same criteria. We do not
6 allow the advertisement of pharmaceutical drugs that are not yet approved by FDA such as Cialis and Levitra. We do not allow pharmaceutical advertising to target the
7 UK and have stricter policies in Japan. ***As with all of our policies, we do not verify what these sites actually do, only what they claim to do.***

8 Public awareness of the ability of people to get drugs through online pharmacies is
9 increasing and as we all know, drugstore.com is using the press to try to force us and
10 others to change their policies. Overture/Yahoo, who has long had the same policy we have, is likely to change their policy to be more restrictive this week. We may
11 get a heads up before they announce a policy change.

12 Our options are:

13 1) Keep policy the same. Good for consumers overall as it increases availability of
14 pharmaceuticals but means that the bad stories will continue.

15 2) Classify pharma ads as nonfamily. This means that anyone with a safe search
16 filter on will not see them. I think we should do this regardless of any other steps we
17 chose to take.

18 3) Mark pharma ads. The idea would be to mark pharma ads with a Pharma-specific
19 label. If you clicked on the label, we would take you to a page which would have a
20 carefully worded warning on pharma practices. (Larry – this is Salar's idea of what
21 you were suggesting. Is this what you had in mind?)

22 4) Only accept pharmas that have been approved by Verified Internet Pharmacy
23 Practice Sites (VIPPS) program of NABP (National Association of Boards of
24 Pharmacy). If there are reciprocal approval boards for Internet sites in other
25 countries, we' will approve sites approved by those boards as well. This would be a
26 very restrictive policy as fewer than 20 pharmas have been approved by this board
27 (Drugstore.com is of course one of them). Interestingly enough, one of the pharmas
28 with questionable practices highlighted in the NYTimes article had actually been
approved by them, but the Board claims that this was a mistake they will not repeat.
Despite this, this is our most conservative option.

5) Involve a third-party verifier. Based on my conversation with Overture, this
seems to be what they are considering. They do it for wine sellers now. The way it
works for wine sellers on Overture is that in order to advertise wine on Overture, you
first have to register with a company called Square Trade. The advertiser pays
Square Trade \$50 to be certified that they are adhering to all local and national laws.
Square Trade mystery shops its customers to make sure they do what they claim to
do. Overture is considering extending this to pharma. eBay also uses third-party
verifiers for some categories. We have never done this so it would be a real policy
shift for us. We have long held that we can't police the web; if we do this, we will be

1 taking a much more active posture towards controlling what our advertisers do then
2 we ever have before.

3 We do not make these decisions based on revenue, but as background, REDACTED

4 I am flying this afternoon but Alana Karen is in the office to answer any questions.

5 Sheryl

6 40. Two days later, on October 29, 2003, defendant Schmidt received another email from
7 Sandberg, via emg@google.com, describing a conversation she had with Drugstore.com regarding,
8 among other things, Google's advertising policy for online pharmacies. The email stated, in relevant
9 part, as follows:

10 Regan, Maryann, Alex, and I spoke to our friends at Drugstore.com today.

11 Their points were the following:

- 12 • They argue that they are doing this to save the world.
- 13 • They claim that all non-VIPPS approved online pharmacies are illegal (which
14 we do not believe to be the case).
- 15 • They will continue to push us and all others to restrict online advertising for
16 online pharma.
- 17 • They believe others will announce changes and are therefore "leaders" and
18 we are killing people. (No joke – Kal said this.)
- 19 • They said they will give us a heads up if they are putting out press releases
20 with our name, but I am not sure I believe them.

21 The points we made were:

- 22 • We listened and made sure they knew we heard all of their policy concerns.
- 23 • We asked if they were concerned that they had a commercial interest in this
24 policy change. Their response was that they care only for consumers.
- 25 • We asked them to not send out meeting agendas or mock press releases with
26 our name in it without our approval.
- 27 • We told them that we were thinking through the policy concerns and that if
28 we had any changes to announce, we would let them know. We would not,
however, be participating in their suggested announcement (attached).

Frosty call at best. Their tactics are outrageous. I felt like I was back in Washington
on a really bad day

1 Omid – If you need an email that can be forwarded to BC and JD, draft below.

2 EMAIL THAT CAN BE FORWARDED:

3 POLICY ISSUE

4 Our current policy is that we allow the advertisement of online pharmacies, both
5 domestic and foreign, only if the site claims to require a prescription.
6 Pharmaceutical comparison or finder sites are judged by same criteria. We do not
7 allow the advertisement of pharmaceutical drugs that are not yet approved by FDA
8 such as Cialis and Levitra. We do not allow pharmaceutical advertising to target the
9 UK and have stricter policies in Japan. As with all of our policies, we do not verify
10 what these sites actually do, only what they claim to do.

11 There is much discussion about the practices some online pharmacies follow. While
12 we do not allow pharmacies who claim not to require prescriptions to run, it is
13 possible that some of the pharmacies we approve do not follow their own stated
14 policies carefully. We are considering not showing these ads to children by ceasing
15 to show ads to users with a safe-search (family safe) filter on. We are also
16 considering finding some other way to mark online pharma ads. A final decision on
17 these steps has not been made.

18 We are not prepared to adopt a more restrictive stance, such as only approving
19 pharmas approved by the Verified Internet Pharmacy Practice Sites (VIPPS) program
20 of NABP (National Association of Boards of Pharmacy). Our policy is designed to
21 provide maximum information and choice to users and being this restrictive is in
22 conflict with that goal.

23 This is an area where the law is still developing. We are planning on watching any
24 legislative changes very closely and will react appropriately.

25 DRUGSTORE.COM

26 Over the past two weeks, Drugstore.com has been using very aggressive tactics to get
27 us, Yahoo, MSN, Overture, and others to only accept ads from pharmas approved by
28 VIPPS. They have sent out press releases, tried to call a meeting of all of these
29 players, and tried to put public and private pressure on us to change our policy.
30 Yesterday they sent a mock press release to us and other search players which
31 included sample quotes from us without our knowledge or acquiescence (attached).
32 They also state the case much more broadly than we believe to be true; e.g., calling
33 all non-VIPPS approved pharmacies “illegal” which they are not.

34 We take their concerns very seriously and many members of our exec team have
35 spoken with them in the past week. Most recently, we spoke with their CEO today.
36 We listened to their policy concerns and made sure that they knew we heard them.
37 We did not agree to any policy changes but said that we will let them know if we
38 were making any changes. They made it clear that they will continue to fight this in
39 the public realm.

40 41. On November 17, 2003, defendant Schmidt received an email from Sandberg via
41 emg@google.com noting that Google faced a serious public relations issue as the only remaining

1 search engine still accepting ads from online pharmacies without attempting to verify their practices.

2 The email stated, in relevant part, as follows:

3 Please forgive my bringing up an issue we have already discussed, but I think this is
4 worth at least one more email, and potentially more discussion. Given that Overture
5 moved so aggressively and they supply ads to Yahoo and MSN, and given that AOL
6 is blocking all of these ads, we are the only player in our industry still accepting
7 these ads. I continue to think that although there is some commercial harm to
8 shutting down these ads, the PR/brand risk we are taking by being out there on our
9 own may not be worth it. I thought this was worth bringing up again as the actions
10 of our competitors this week has increased our PR/brand risk significantly.

11 (Of course, feel free to ignore this email if no one thinks this decision is worth
12 revisiting.)

13 Sheryl

14 42. On November 18, 2003, defendant Schmidt received an email from Cindy
15 McCaffrey, Google's then Vice President of Corporate Marketing via emg@google.com echoing
16 Sandberg's concerns about Google's advertising policy for online pharmacies. The email stated, in
17 relevant part, as follows:

18 I definitely think it's worth revisiting. This is a very serious matter and needs to be
19 addressed quickly. I understand that Sheryl had a very tough interview this morning
20 with the same Washington Post reporter Larry talked to a few weeks ago (David K.
21 will be sending a summary). She did a great job, but we do not have a good response
22 to this issue and it is not going to go away. The industry is moving fast to remove
23 most pharma ads; our gesture to address this will be perceived as just not enough
24 compared with what the other companies are doing. I understand that we should not
25 let other companies, press, etc. influence our decision-making around policy, but I
26 think you should understand that this has become a big, big issue and the potential of
27 serious harm to our brand among our users is very real. The Post plans to run with a
28 story next week. We'll be cast as the only company not moving quickly enough to
address this issue.

If we can make something happen quickly, we can get back to reporter this week and
save ourselves from disaster in the media. We just don't need this.

43. On November 18, 2003, defendant Schmidt received an email via emg@google.com
echoing Sandberg and McCaffrey's concerns and providing more details about the *Washington Post*
article. The email stated, in relevant part, as follows:

Here's the scoop on the Washington Post call:

*A story is scheduled to run in next week's paper; I expect it will be very negative
for Google and will position us in an unfavorable light.

1 *The reporter will devote this article to the role search engines and portals play
2 between illegal online pharmacies and consumers. As all of Google's competitors
3 have recently adapted their policies to restrict these ads, we'll be criticized for
4 holding out and not reacting quickly.

5 *The article will also challenge our interpretation of the law. The reporter and reps.
6 from the FDA (who will be quoted) believe that Google AdWords is facilitating the
7 illegal distribution of pharm. drugs online. They have analyzed our pharm.
8 advertisers extensively and have determined that a majority of these businesses are
9 illegal.

10 *And as Cindy noted below . . . as much as we push the message that we are
11 currently reviewing our policies and will ultimately do the right thing, our efforts are
12 not perceived as aggressive enough – this is amplified by the recent changes by
13 OVER (Overture).

14 *The message we also use about providing the broadest range of choices to our users
15 also doesn't hold water in this case, as most of these questionable online pharmacies
16 charge a 3x premium over sites like walgreens.com.

17 *Lastly, the story of the 15 year-old who became addicted to Hydrocodone will also
18 be reflected in this article – and as we all know, the father blames Google AdWords
19 for connecting his son to an online pharm. that sold him these pills sans prescription.
20 Sheryl has recently spoken to the father and further explained our point of view, but
21 he's of the opinion that we should remove these ads entirely.

22 It would be great to be finalize [sic] any changes we might make this week, so we
23 can brief the Washington Post before this article goes to print.

24 David

25 44. Based on the emails, and conversations contained therein, defendant Schmidt became
26 aware of the illegal Canadian ads by no later than October 2003, and, when faced with this illegality,
27 continued Google's advertising policy for online pharmacies in a manner that allowed Canadian
28 online pharmacies to continue to sell prescription drugs without a prescription via Google's website.

45. By doing so, defendant Schmidt breached his fiduciary duty of loyalty (and good
faith) owed to Google and, under Delaware law, is liable to the corporation for the damages arising
from his breach of fiduciary duty. Thus, the foregoing evidence, taken as true, is sufficient to raise a
reasonable doubt as to defendant Schmidt's disinterestedness, as defined in the Court's Order at 8-9
("As is particularly relevant here, a reasonable doubt as to a director's disinterestedness also exists
where a director faces a 'substantial likelihood' of liability for breaching his fiduciary duty of loyalty
(and good faith)."). Therefore, because defendant Schmidt is interested in the outcome of this

litigation, a pre-suit demand for him to bring, let alone vigorously prosecute the derivative claims is futile and excused as a matter of law.

Defendant Page Is Interested Because He Knew About the Illegal Canadian Ads

46. Defendant Page became aware of the illegal Canadian ads on Google's website in October 2003. Just as defendant Schmidt, defendant Page received emails from, and participated in conversations with other top ranking Google officials regarding the Company's advertising policy for online pharmacies. Although Google's so-called "pharma" policy purportedly did not allow the sale of prescription drugs without a prescription, defendant Page knew that Canadian online pharmacies could, and did, sell prescription drugs without a prescription on Google's website, and when confronted with this illegality, defendant Page continued Google's policy, with disastrous consequences for the Company.

47. For example, on October 21, 2003, defendant Page received an email from Sandberg, Google's then Vice President of Global Online Sales & Operations, forwarding a description of Google's purported current advertising policy for online pharmacies and a potential future pharma policy. The email stated, in relevant part, as follows:

Current Pharma Policy

We allow the advertisement of online pharmacies ONLY IF they require a prescription or a doctor's consultation. If advertiser will sell prescription drugs without prescription or doctor's consultation, we disapprove.

*This includes foreign pharmacies

*Pharmaceutical comparison or finder Sites are judged by same criteria

We will not allow the advertisement of pharmaceutical drugs that are not yet approved by FDA such as Cialis and Levitra.

We do not allow pharmaceutical advertising to target the UK. Also stricter policies in Japan.

Potential Pharma Policy

We will not allow the advertisement of online pharmacies unless approved by Verified Internet Pharmacy Practice Sites (VIPPS) program of NABP (National Association of Boards of Pharmacy). If there are reciprocal approval boards for Internet sites in other countries, we will approve sites approved by those boards as well.

1 *There are few International boards that have approved Internet sites as of yet

2 *Note: Current best way to do this is to block all keywords which effectively blocks
3 non-pharma related ads and pharmaceutical companies themselves until we have
technical fix.

4 Unlicensed question

5 To be VIPPS certified, a pharmacy must comply with the licensing and inspection
6 requirements of their state and each state to which they dispense pharmaceuticals.

7 Backing into this question, 'unlicensed pharmacies' are not necessarily complying
8 with the licensing and inspection requirement of their state and each state to which
they dispense pharmaceuticals.

9 I think it is safe to say that we have been accepting sites that do not necessarily meet
those requirements.

10 Former Data Pull info

11 REDACTED

12 REDACTED

13 48. On October 21, 2003, defendant Page also received an email from Tim Armstrong,
14 Google's then President of Americas Operation, describing a troubling conversation with
15 Drugstore.com regarding Google's online pharmacies advertising policy, which Drugstore.com
16 viewed as overly permissive because it allowed the pharmacies to sell prescription drugs without a
17 prescription. The email stated, in relevant part, as follows:

18 I just spoke with their [Drugstore.com's] CEO – Kal and our RSM Regan. He had
19 the following things to say –

20 He will be sending the press release to us as soon as it is done

21 We will be in the release regardless of how we feel about because this is his chance
22 to protect his vertical

23 AOL is handling this correctly in his mind, so they will not be in the press release

24 Drugstore.com is making a full assault on Washington, DC. Peter Neupert, their
25 chairman, is spending the next few weeks in DC to lobby and do press interviews –
Drugstore also hired a PR/Lobby group to help them out

26 We discussed Google's reaction to issues like these – we look at the user experience,
27 we look at the clarity of the situation, precedent for Google of taking actions or
filtering – all of these issues

28 His take on the situation: This is his shot to clean out the black market players and to
protect his vertical

1 My message back to him was: We understand his passion for the subject, but we
2 would rather work this out together instead of in the press. We would like to not be
3 in the release and being in the release may cause us to strongly word our message
4 about open information and user choice – and that Drugstore may have self-serving
5 reasons that are not connected to users health issues (in a smoother manner). I did
6 mention the press release may backfire with us because it would force us to be vocal
7 about self-serving nature of the press release.

8 The net-net is this – he is set on doing this and he sees this as his opportunistic
9 chance to get Washington on his side.

10 Look for the release and if it is really damaging, we can call him back and discuss it
11 with him. I told him to expect a call from us after we have a copy of the release –
12 TA

13 49. On October 21, 2003, defendant Page received an email forwarding a copy of
14 Drugstore.com’s press release. The Drugstore.com press release described the dangers of Canadian
15 pharmacies, the Verified Internet Pharmacy Practice Sites (“VIPPS”) certification program of the
16 National Association of Boards of Pharmacy (“NABP”) and that only a handful of pharmacies had
17 earned VIPPS certification. The Drugstore.com press release also singled out Google for their role,
18 along with a few other search engines, in driving traffic to rogue pharmacies by permitting them to
19 advertise on Google’s website. More specifically, the Drugstore.com press release that defendant
20 Page received on October 21, 2003, stated, in relevant part, as follows:

21 While the problem of enforcing our existing laws against illegal pharmacies is
22 complicated, an immediate solution to the problem is very simple. ***Illegal
pharmacies rely on the incredible amount of traffic generated by their
advertisements on major Internet search engines, such as Google, MSN, and
Yahoo.*** The first step in protecting public health and safety, drugstore.com
management states, is for the search engines to voluntarily stop accepting rogue
pharmacy ads. Until then, or until Congress forces search engines to stop accepting
such advertising, consumers are warned to be very cautious about ads for
prescription medications that sound too good to be true.

23 “It’s unfortunate that major search engines, which are trusted by the public, are
24 enabling rogue pharmacies to trick the public,” continued Neupert. “While
25 technology has effectively helped streamline the delivery of prescription drugs and
26 substantially lowered the cost of drugs, our public policy to safeguard the
27 transactions has not kept pace. ***We sincerely hope that Yahoo, MSN, Google, and
other search engines do the right thing and refuse to carry these ads.*** If not, then
28 Congress needs to protect the public by making it unlawful to sell advertising space
to companies that provide illegal pharmacy services, such as re-importation, shipping
without a legitimate prescription, and misrepresentation.”

1 50. A few days later, on October 27, 2003, defendant Page received yet another email
2 discussing the fact that Google's official policy of not allowing pharmacies to advertise on Google if
3 they sold prescription drugs without a prescription was a sham and that the only requirement that
4 Google imposed on Internet pharmacies was that they claim to require a prescription. The October
5 27, 2003 email from Sandberg, Google's then Vice President of Global Online Sales & Operations,
6 to Page, sent via emg@google.com, the e-mail listserv for Google's executive management that
7 includes Page, Schmidt and Brin, stated, in relevant part, as follows:
8

9 I believe pharma policy may be a topic in today's EMG meeting.

10 Our current policy is that we allow the advertisement of online pharmacies, both
11 domestic and foreign, only if the site claims to require a prescription. Pharmaceutical comparison or finder sites are judged by same criteria. We do not
12 allow the advertisement of pharmaceutical drugs that are not yet approved by FDA
13 such as Cialis and Levitra. We do not allow pharmaceutical advertising to target the
14 UK and have stricter policies in Japan. As with all of our policies, we do not verify
15 what these sites actually do, only what they claim to do.

16 Public awareness of the ability of people to get drugs through online pharmacies is
17 increasing and as we all know, drugstore.com is using the press to try to force us and
18 others to change their policies. Overture/Yahoo, who has long had the same policy
19 we have, is likely to change their policy to be more restrictive this week. We may
20 get a heads up before they announce a policy change.

21 Our options are:

22 1) Keep policy the same. Good for consumers overall as it increases availability of
23 pharmaceuticals but means that the bad stories will continue.

24 2) Classify pharma ads as nonfamily. This means that anyone with a safe search
25 filter on will not see them. I think we should do this regardless of any other steps we
26 chose to take.

27 3) Mark pharma ads. The idea would be to mark pharma ads with a Pharma-specific
28 label. If you clicked on the label, we would take you to a page which would have a
carefully worded warning on pharma practices. (Larry – this is Salar's idea of what
you were suggesting. Is this what you had in mind?)

 4) Only accept pharmas that have been approved by Verified Internet Pharmacy
Practice Sites (VIPPS) program of NABP (National Association of Boards of
Pharmacy). If there are reciprocal approval boards for Internet sites in other
countries, we' will approve sites approved by those boards as well. This would be a
very restrictive policy as fewer than 20 pharmas have been approved by this board
(Drugstore.com is of course one of them). Interestingly enough, one of the pharmas
with questionable practices highlighted in the NYTimes article had actually been
approved by them, but the Board claims that this was a mistake they will not repeat.
Despite this, this is our most conservative option.

1 5) Involve a third-party verifier. Based on my conversation with Overture, this
2 seems to be what they are considering. They do it for wine sellers now. The way it
3 works for wine sellers on Overture is that in order to advertise wine on Overture, you
4 first have to register with a company called Square Trade. The advertiser pays
5 Square Trade \$50 to be certified that they are adhering to all local and national laws.
6 Square Trade mystery shops its customers to make sure they do what they claim to
do. Overture is considering extending this to pharma. eBay also uses third-party
verifiers for some categories. We have never done this so it would be a real policy
shift for us. We have long held that we can't police the web; if we do this, we will be
taking a much more active posture towards controlling what our advertisers do then
we ever have before.

7 We do not make these decisions based on revenue, but as background, REDACTED

8 I am flying this afternoon but Alana Karen is in the office to answer any questions.

9 Sheryl

10 51. Two days later, on October 29, 2003, defendant Page received an email from
11 Sandberg via emg@google.com describing a conversation she had with Drugstore.com regarding,
12 among other things, Google's advertising policy for online pharmacies. The email stated, in relevant
13 part, as follows:

14 Regan, Maryann, Alex, and I spoke to our friends at Drugstore.com today.

15 Their points were the following:

- 16 • They argue that they are doing this to save the world.
- 17 • They claim that all non-VIPPS approved online pharmacies are illegal (which
18 we do not believe to be the case).
- 19 • They will continue to push us and all others to restrict online advertising for
20 online pharma.
- 21 • They believe others will announce changes and are therefore "leaders" and
22 we are killing people. (No joke – Kal said this.)
- 23 • They said they will give us a heads up if they are putting out press releases
24 with our name, but I am not sure I believe them.

25 The points we made were:

- 26 • We listened and made sure they knew we heard all of their policy concerns.
- 27 • We asked if they were concerned that they had a commercial interest in this
28 policy change. Their response was that they care only for consumers.

- We asked them to not send out meeting agendas or mock press releases with our name in it without our approval.
- We told them that we were thinking through the policy concerns and that if we had any changes to announce, we would let them know. We would not, however, be participating in their suggested announcement (attached).

Frosty call at best. Their tactics are outrageous. I felt like I was back in Washington on a really bad day

Omid – If you need an email that can be forwarded to BC and JD, draft below.

EMAIL THAT CAN BE FORWARDED:

POLICY ISSUE

Our current policy is that we allow the advertisement of online pharmacies, both domestic and foreign, only if the site claims to require a prescription. Pharmaceutical comparison or finder sites are judged by same criteria. We do not allow the advertisement of pharmaceutical drugs that are not yet approved by FDA such as Cialis and Levitra. We do not allow pharmaceutical advertising to target the UK and have stricter policies in Japan. As with all of our policies, we do not verify what these sites actually do, only what they claim to do.

There is much discussion about the practices some online pharmacies follow. While we do not allow pharmacies who claim not to require prescriptions to run, it is possible that some of the pharmacies we approve do not follow their own stated policies carefully. We are considering not showing these ads to children by ceasing to show ads to users with a safe-search (family safe) filter on. We are also considering finding some other way to mark online pharma ads. A final decision on these steps has not been made.

We are not prepared to adopt a more restrictive stance, such as only approving pharmas approved by the Verified Internet Pharmacy Practice Sites (VIPPS) program of NABP (National Association of Boards of Pharmacy). Our policy is designed to provide maximum information and choice to users and being this restrictive is in conflict with that goal.

This is an area where the law is still developing. We are planning on watching any legislative changes very closely and will react appropriately.

DRUGSTORE.COM

Over the past two weeks, Drugstore.com has been using very aggressive tactics to get us, Yahoo, MSN, Overture, and others to only accept ads from pharmas approved by VIPPS. They have sent out press releases, tried to call a meeting of all of these players, and tried to put public and private pressure on us to change our policy. Yesterday they sent a mock press release to us and other search players which included sample quotes from us without our knowledge or acquiescence (attached). They also state the case much more broadly than we believe to be true; e.g., calling all non-VIPPS approved pharmacies “illegal” which they are not.

We take their concerns very seriously and many members of our exec team have spoken with them in the past week. Most recently, we spoke with their CEO today.

1 We listened to their policy concerns and made sure that they knew we heard them.
2 We did not agree to any policy changes but said that we will let them know if we
3 were making any changes. They made it clear that they will continue to fight this in
4 the public realm.

5 52. On October 29, 2003, defendant Page emailed Sandberg and asked her to send the
6 above meeting summary to defendant Doerr, who at that time also sat on the board of directors of
7 Drugstore.com. On October 30, 2003, Sandberg forwarded her meeting summary to Doerr. Based
8 on Doerr's simultaneous service on both the Drugstore.com board of directors and the Google
9 Board, it may be inferred that Doerr also became aware of the illegal Canadian ads by October 2003.

10 53. On November 17, 2003, defendant Page received an email from Sandberg via
11 emg@google.com noting that Google faced a serious public relations issue as the only remaining
12 search engine still accepting ads from online pharmacies without attempting to verify their practices.
13 The email stated, in relevant part, as follows:

14 Please forgive my bringing up an issue we have already discussed, but I think this is
15 worth at least one more email, and potentially more discussion. Given that Overture
16 moved so aggressively and they supply ads to Yahoo and MSN, and given that AOL
17 is blocking all of these ads, we are the only player in our industry still accepting
18 these ads. I continue to think that although there is some commercial harm to
19 shutting down these ads, the PR/brand risk we are taking by being out there on our
20 own may not be worth it. I thought this was worth bringing up again as the actions
21 of our competitors this week has increased our PR/brand risk significantly.

22 (Of course, feel free to ignore this email if no one thinks this decision is worth
23 revisiting.)

24 Sheryl

25 54. On November 18, 2003, defendant Page received an email from McCaffrey, Google's
26 then Vice President of Corporate Marketing, via emg@google.com echoing Sandberg's concerns
27 about Google's advertising policy for online pharmacies. The email stated, in relevant part, as
28 follows:

29 I definitely think it's worth revisiting. This is a very serious matter and needs to be
30 addressed quickly. I understand that Sheryl had a very tough interview this morning
31 with the same Washington Post reporter Larry talked to a few weeks ago (David K.
32 will be sending a summary). She did a great job, but we do not have a good response
33 to this issue and it is not going to go away. The industry is moving fast to remove
34 most pharma ads; our gesture to address this will be perceived as just not enough

1 compared with what the other companies are doing. I understand that we should not
2 let other companies, press, etc. influence our decision-making around policy, but I
3 think you should understand that this has become a big, big issue and the potential of
4 serious harm to our brand among our users is very real. The Post plans to run with a
5 story next week. We'll be cast as the only company not moving quickly enough to
6 address this issue.

7 If we can make something happen quickly, we can get back to reporter this week and
8 save ourselves from disaster in the media. We just don't need this.

9 55. On the same date, November 18, 2003, defendant Page received an email via
10 emg@google.com echoing Sandberg and McCaffrey's concerns and providing more details about
11 the *Washington Post* article. The email stated, in relevant part, as follows:

12 Here's the scoop on the Washington Post call:

13 *A story is scheduled to run in next week's paper; I expect it will be very negative
14 for Google and will position us in an unfavorable light.

15 *The reporter will devote this article to the role search engines and portals play
16 between illegal online pharmacies and consumers. As all of Google's competitors
17 have recently adapted their policies to restrict these ads, we'll be criticized for
18 holding out and not reacting quickly.

19 *The article will also challenge our interpretation of the law. The reporter and reps.
20 from the FDA (who will be quoted) believe that Google AdWords is facilitating the
21 illegal distribution of pharm. drugs online. They have analyzed our pharm.
22 advertisers extensively and have determined that a majority of these businesses are
23 illegal.

24 *And as Cindy noted below . . . as much as we push the message that we are
25 currently reviewing our policies and will ultimately do the right thing, our efforts are
26 not perceived as aggressive enough – this is amplified by the recent changes by
27 OVER (Overture).

28 *The message we also use about providing the broadest range of choices to our users
also doesn't hold water in this case, as most of these questionable online pharmacies
charge a 3x premium over sites like walgreens.com.

*Lastly, the story of the 15 year-old who became addicted to Hydrocodone will also
be reflected in this article – and as we all know, the father blames Google AdWords
for connecting his son to an online pharm. that sold him these pills sans prescription.
Sheryl has recently spoken to the father and further explained our point of view, but
he's of the opinion that we should remove these ads entirely.

It would be great to be finalize [sic] any changes we might make this week, so we
can brief the Washington Post before this article goes to print.

David

1 56. Based on the emails, and the conversations contained therein, defendant Page became
2 aware of the illegal Canadian ads by no later than October 2003, and, when faced with this illegality,
3 continued Google's advertising policy for online pharmacies in a manner that allowed Canadian
4 online pharmacies to continue to sell prescription drugs without a prescription on Google's website.

5 57. By doing so, defendant Page breached his fiduciary duty of loyalty (and good faith)
6 owed to Google and, under Delaware law, is liable to the corporation for the damages arising from
7 his breach of fiduciary duty. Thus, the foregoing evidence, taken as true, is sufficient to raise a
8 reasonable doubt as to defendant Page's disinterestedness. This is especially true since defendant
9 Page's knowledge of the illegal Canadian ads mirrors almost exactly defendant Schmidt's
10 knowledge of the illegal Canadian ads. Therefore, because defendant Page is "interested" in the
11 outcome of this litigation, a pre-suit demand for him to bring, let alone vigorously prosecute the
12 derivative claims is futile and excused as a matter of law.

13 **Defendant Brin Is Interested Because**
14 **He Knew About the Illegal Canadian Ads**

15 58. Defendant Brin became aware of the illegal Canadian ads on Google's website in late
16 2003 through emails from, and conversations with other top ranking Google officials regarding
17 Google's advertising policy regarding online pharmacies – including an August 2003 email from
18 defendant Schmidt explaining that Drugstore.com had requested that Google "not accept advertisers
19 who are advertising items like viagra from online pharmacies that may or may not be properly
20 licensed." However, when confronted with this illegality, Brin continued Google's advertising
21 policy for online pharmacies in a manner that permitted Canadian online pharmacies to continue to
22 sell prescription drugs without a prescription on Google's website.

23 59. For example, defendant Brin received an August 22, 2003 email summarizing
24 Hurley's conversation with Drugstore.com alerting Google to rogue online pharmacies violating
25 U.S. law by selling prescription drugs without a prescription via search engines like Google's
26 website. The email stated, in relevant part, as follows:

27 Goal: Educate Google executives on the risks associated with the continued paid
28 sponsorship of rogue pharmacies

Multiple national agencies have declared the Importation process illegal and a risk to US consumers. The key takeaways are:

****Importation of medication is illegal***

*Risk of counterfeit product

*Risk of contaminated product

*Risk of expired or duplicative therapy

*Unregulated by both US and Canadian/Mexican Authorities (FDA and FDA equivalent) as no consistent safety and quality controls exist for purchasing and receipt of prescription medications

Agencies include:

*FDA· Federal Drug Administration

****Violation of Food, Drug, and Cosmetic Act to import prescription product.***

*Foreign product may not meet all the requirement [sic] for US approval, and thus qualifies as an unapproved product

*Medications are frequently labeled incorrectly

*Extremely unlikely that a pharmacy could ensure all applicable legal requirements are met

*Individuals and business that cause those shipments also violate the act and are therefore civilly and criminally liable. (RX Depot store front issue cease and desist)

60. On October 21, 2003, defendant Brin received an email forwarding a copy of Drugstore.com's press release. The Drugstore.com press release described the dangers of Canadian pharmacies, the VIPPS certification program of the NABP and that only 14 pharmacies had earned VIPPS certification. The Drugstore.com press release also singled out Google for their role, along with a few other search engines, in driving traffic to rogue pharmacies by permitting them to advertise on Google's website. More specifically, the Drugstore.com press release that defendant Page received on October 21, 2003, stated, in relevant part, as follows:

While the problem of enforcing our existing laws against illegal pharmacies is complicated, an immediate solution to the problem is very simple. Illegal pharmacies rely on the incredible amount of traffic generated by their advertisements on major Internet search engines, such as Google, MSN, and Yahoo. The first step in protecting public health and safety, drugstore.com management states, is for the search engines to voluntarily stop accepting rogue pharmacy ads. Until then, or until

1 Congress forces search engines to stop accepting such advertising, consumers are
2 warned to be very cautious about ads for prescription medications that sound too
good to be true.

3 “It’s unfortunate that major search engines, which are trusted by the public, are
4 enabling rogue pharmacies to trick the public,” continued Neupert. “While
5 technology has effectively helped streamline the delivery of prescription drugs and
6 substantially lowered the cost of drugs, our public policy to safeguard the
7 transactions has not kept pace. We sincerely hope that Yahoo, MSN, Google, and
other search engines do the right thing and refuse to carry these ads. If not, then
Congress needs to protect the public by making it unlawful to sell advertising space
to companies that provide illegal pharmacy services, such as re-importation, shipping
without a legitimate prescription, and misrepresentation.”

8 61. A few days later, on October 27, 2003, defendant Brin received yet another email
9 discussing the fact that Google’s official policy of not allowing pharmacies to advertise on Google if
10 they sold prescription drugs without a prescription was a sham and that the only requirement that
11 Google imposed on Internet pharmacies was that they claim to require a prescription. The October
12 27, 2003 email from Sandberg, Google’s then Vice President of Global Online Sales & Operations,
13 to Brin, via emg@google.com, the email listserv for Google’s executive management group that
14 included Brin, Schmidt and Page, stated, in relevant part, as follows:
15

16 I believe pharma policy may be a topic in today’s EMG meeting.

17 Our current policy is that we allow the advertisement of online pharmacies, both
18 domestic and foreign, only if the site claims to require a prescription.
19 Pharmaceutical comparison or finder sites are judged by same criteria. We do not
20 allow the advertisement of pharmaceutical drugs that are not yet approved by FDA
such as Cialis and Levitra. We do not allow pharmaceutical advertising to target the
UK and have stricter policies in Japan. As with all of our policies, we do not verify
what these sites actually do, only what they claim to do.

21 Public awareness of the ability of people to get drugs through online pharmacies is
22 increasing and as we all know, drugstore.com is using the press to try to force us and
23 others to change their policies. Overture/Yahoo, who has long had the same policy
we have, is likely to change their policy to be more restrictive this week. We may
get a heads up before they announce a policy change.

24 Our options are:

25 1) Keep policy the same. Good for consumers overall as it increases availability of
26 pharmaceuticals but means that the bad stories will continue.

27 2) Classify pharma ads as nonfamily. This means that anyone with a safe search
28 filter on will not see them. I think we should do this regardless of any other steps we
chose to take.

1 3) Mark pharma ads. The idea would be to mark pharma ads with a Pharma-specific
2 label. If you clicked on the label, we would take you to a page which would have a
3 carefully worded warning on pharma practices. (Larry – this is Salar’s idea of what
4 you were suggesting. Is this what you had in mind?)

5 4) Only accept pharmas that have been approved by Verified Internet Pharmacy
6 Practice Sites (VIPPS) program of NABP (National Association of Boards of
7 Pharmacy). If there are reciprocal approval boards for Internet sites in other
8 countries, we’ will approve sites approved by those boards as well. This would be a
9 very restrictive policy as fewer than 20 pharmas have been approved by this board
10 (Drugstore.com is of course one of them). Interestingly enough, one of the pharmas
11 with questionable practices highlighted in the NYTimes article had actually been
12 approved by them, but the Board claims that this was a mistake they will not repeat.
13 Despite this, this is our most conservative option.

14 5) Involve a third-party verifier. Based on my conversation with Overture, this
15 seems to be what they are considering. They do it for wine sellers now. The way it
16 works for wine sellers on Overture is that in order to advertise wine on Overture, you
17 first have to register with a company called Square Trade. The advertiser pays
18 Square Trade \$50 to be certified that they are adhering to all local and national laws.
19 Square Trade mystery shops its customers to make sure they do what they claim to
20 do. Overture is considering extending this to pharma. eBay also uses third-party
21 verifiers for some categories. We have never done this so it would be a real policy
22 shift for us. We have long held that we can’t police the web; if we do this, we will be
23 taking a much more active posture towards controlling what our advertisers do then
24 we ever have before.

25 We do not make these decisions based on revenue, but as background, REDACTED

26 I am flying this afternoon but Alana Karen is in the office to answer any questions.

27 Sheryl

28 62. Two days later, on October 29, 2003, defendant Brin received an email from
Sandberg via emg@google.com describing a conversation she had with Drugstore.com regarding,
among other things, Google’s advertising policy for online pharmacies. The email stated, in relevant
part, as follows:

Regan, Maryann, Alex, and I spoke to our friends at Drugstore.com today.

Their points were the following:

- They argue that they are doing this to save the world.
- They claim that all non-VIPPS approved online pharmacies are illegal (which we do not believe to be the case).
- They will continue to push us and all others to restrict online advertising for online pharma.

- They believe others will announce changes and are therefore “leaders” and we are killing people. (No joke – Kal said this.)
- They said they will give us a heads up if they are putting out press releases with our name, but I am not sure I believe them.

The points we made were:

- We listened and made sure they knew we heard all of their policy concerns.
- We asked if they were concerned that they had a commercial interest in this policy change. Their response was that they care only for consumers.
- We asked them to not send out meeting agendas or mock press releases with our name in it without our approval.
- We told them that we were thinking through the policy concerns and that if we had any changes to announce, we would let them know. We would not, however, be participating in their suggested announcement (attached).

Frosty call at best. Their tactics are outrageous. I felt like I was back in Washington on a really bad day

Omid – If you need an email that can be forwarded to BC and JD, draft below.

EMAIL THAT CAN BE FORWARDED:

POLICY ISSUE

Our current policy is that we allow the advertisement of online pharmacies, both domestic and foreign, only if the site claims to require a prescription. Pharmaceutical comparison or finder sites are judged by same criteria. We do not allow the advertisement of pharmaceutical drugs that are not yet approved by FDA such as Cialis and Levitra. We do not allow pharmaceutical advertising to target the UK and have stricter policies in Japan. As with all of our policies, we do not verify what these sites actually do, only what they claim to do.

There is much discussion about the practices some online pharmacies follow. While we do not allow pharmacies who claim not to require prescriptions to run, it is possible that some of the pharmacies we approve do not follow their own stated policies carefully. We are considering not showing these ads to children by ceasing to show ads to users with a safe-search (family safe) filter on. We are also considering finding some other way to mark online pharma ads. A final decision on these steps has not been made.

We are not prepared to adopt a more restrictive stance, such as only approving pharmas approved by the Verified Internet Pharmacy Practice Sites (VIPPS) program of NABP (National Association of Boards of Pharmacy). Our policy is designed to provide maximum information and choice to users and being this restrictive is in conflict with that goal.

This is an area where the law is still developing. We are planning on watching any legislative changes very closely and will react appropriately.

1 DRUGSTORE.COM

2 Over the past two weeks, Drugstore.com has been using very aggressive tactics to get
3 us, Yahoo, MSN, Overture, and others to only accept ads from pharmas approved by
4 VIPPS. They have sent out press releases, tried to call a meeting of all of these
5 players, and tried to put public and private pressure on us to change our policy.
6 Yesterday they sent a mock press release to us and other search players which
7 included sample quotes from us without our knowledge or acquiescence (attached).
8 They also state the case much more broadly than we believe to be true; e.g., calling
9 all non-VIPPS approved pharmacies "illegal" which they are not.

10 We take their concerns very seriously and many members of our exec team have
11 spoken with them in the past week. Most recently, we spoke with their CEO today.
12 We listened to their policy concerns and made sure that they knew we heard them.
13 We did not agree to any policy changes but said that we will let them know if we
14 were making any changes. They made it clear that they will continue to fight this in
15 the public realm.

16 63. On November 17, 2003, defendant Brin received an email from Sandberg via
17 emg@google.com noting that Google faced a serious public relations issue as the only remaining
18 search engine still accepting ads from online pharmacies without attempting to verify their practices.

19 The email stated, in relevant part, as follows:

20 Please forgive my bringing up an issue we have already discussed, but I think this is
21 worth at least one more email, and potentially more discussion. Given that Overture
22 moved so aggressively and they supply ads to Yahoo and MSN, and given that AOL
23 is blocking all of these ads, we are the only player in our industry still accepting
24 these ads. I continue to think that although there is some commercial harm to
25 shutting down these ads, the PR/brand risk we are taking by being out there on our
26 own may not be worth it. I thought this was worth bringing up again as the actions
27 of our competitors this week has increased our PR/brand risk significantly.

28 (Of course, feel free to ignore this email if no one thinks this decision is worth
revisiting.)

Sheryl

64. On November 18, 2003, defendant Brin received an email from McCaffrey, Google's
then Vice President of Corporate Marketing, via emg@google.com echoing Sandberg's concerns
about Google's advertising policy for online pharmacies. The email stated, in relevant part, as
follows:

I definitely think it's worth revisiting. This is a very serious matter and needs to be
addressed quickly. I understand that Sheryl had a very tough interview this morning
with the same Washington Post reporter Larry talked to a few weeks ago (David K.
will be sending a summary). She did a great job, but we do not have a good response
to this issue and it is not going to go away. The industry is moving fast to remove

1 most pharma ads; our gesture to address this will be perceived as just not enough
2 compared with what the other companies are doing. I understand that we should not
3 let other companies, press, etc. influence our decision-making around policy, but I
4 think you should understand that this has become a big, big issue and the potential of
serious harm to our brand among our users is very real. The Post plans to run with a
story next week. We'll be cast as the only company not moving quickly enough to
address this issue.

5 If we can make something happen quickly, we can get back to reporter this week and
6 save ourselves from disaster in the media. We just don't need this.

65. On November 18, 2003, defendant Brin received an email via emg@google.com
7 echoing Sandberg and McCaffrey's concerns and providing more details about the *Washington Post*
8 article. The email stated, in relevant part, as follows:
9

10 Here's the scoop on the Washington Post call:

11 *A story is scheduled to run in next week's paper; I expect it will be very negative
12 for Google and will position us in an unfavorable light.

13 *The reporter will devote this article to the role search engines and portals play
14 between illegal online pharmacies and consumers. As all of Google's competitors
have recently adapted their policies to restrict these ads, we'll be criticized for
holding out and not reacting quickly.

15 *The article will also challenge our interpretation of the law. The reporter and reps.
16 from the FDA (who will be quoted) believe that Google AdWords is facilitating the
17 illegal distribution of pharm. drugs online. They have analyzed our pharm.
advertisers extensively and have determined that a majority of these businesses are
illegal.

18 *And as Cindy noted below . . . as much as we push the message that we are
19 currently reviewing our policies and will ultimately do the right thing, our efforts are
20 not perceived as aggressive enough – this is amplified by the recent changes by
OVER (Overture).

21 *The message we also use about providing the broadest range of choices to our users
22 also doesn't hold water in this case, as most of these questionable online pharmacies
charge a 3x premium over sites like walgreens.com.

23 *Lastly, the story of the 15 year-old who became addicted to Hydrocodone will also
24 be reflected in this article – and as we all know, the father blames Google AdWords
for connecting his son to an online pharm. that sold him these pills sans prescription.
Sheryl has recently spoken to the father and further explained our point of view, but
he's of the opinion that we should remove these ads entirely.

25 It would be great to be finalize [sic] any changes we might make this week, so we
26 can brief the Washington Post before this article goes to print.

27 David
28

1 66. Based on the emails and conversations contained therein, defendant Brin became
2 aware of the illegal Canadian ads around August 2003, and, when faced with this illegality,
3 continued Google's advertising policy for online pharmacies in a manner that allowed Canadian
4 online pharmacies to continue to sell prescription drugs without a prescription via Google's website.

5 67. By doing so, defendant Brin breached his fiduciary duty of loyalty (and good faith)
6 owed to Google and, under Delaware law, is liable to the corporation for the damages arising from
7 his breach of fiduciary duty. Thus, the foregoing evidence, taken as true, is sufficient to raise a
8 reasonable doubt as to defendant Brin's disinterestedness. This is especially true since defendant
9 Brin's knowledge of the illegal Canadian ads is essentially the same as defendant Schmidt and
10 Page's knowledge of the illegal ads. Therefore, because defendant Brin is "interested" in the
11 outcome of this litigation, a pre-suit demand for him to bring, let alone vigorously prosecute the
12 derivative claims is futile and excused as a matter of law.

13 68. In sum, by October 2003 at the latest, defendants Schmidt, Page and Brin, and each of
14 them, had personal knowledge of the fact that Google's purported advertising policy for online
15 pharmacies allowed Canadian online pharmacies to sell prescription drugs without a prescription on
16 Google's website. However, when confronted with the illegal Canadian ads, defendant Schmidt,
17 Page and Brin, and each of them, continued Google's so-called "pharma" policy in a manner that
18 allowed Canadian online pharmacies to continue to illegally sale prescription drugs via Google's
19 website.

20 69. As Google's directors and most senior executive officers, defendants Schmidt, Page
21 and Brin owed Google a fiduciary duty of loyalty (and good faith) to conduct the Company's
22 business and affairs in accordance with the federal laws prohibiting the illegal sale of prescription
23 drugs. However, despite their knowledge of the illegal Canadian ads, defendants Schmidt, Page and
24 Brin, and each of them, failed to do so. And, as a result, in August 2011, Google was forced to pay
25 \$500 million to the DOJ for violating 21 U.S.C. §331(a) and (d) and 21 U.S.C. §952.

26 70. Under Delaware law, directors who breach their fiduciary duty may be held liable to
27 the corporation for damages. Here, the emails and other documentary evidence, taken as true, show
28 that defendants Schmidt, Page and Brin, and each of them, is "interested" in the outcome of this

1 litigation, as each faces a substantial likelihood of liability for the damages Google suffered as a
2 result of the illegal Canadian ads. Further, because they are each an “interested” director, a pre-suit
3 demand for defendant Schmidt, Page and Brin, individually and collectively, to bring, let alone
4 vigorously prosecute the derivative claims is excused as a matter of law.

5 **DEFENDANTS’ WRONGFUL ACTS AND OMISSIONS**

6 71. Google is the world’s largest Internet search and technology corporation. The
7 Company offers various advertising services that permit online pharmacy advertisers in Canada, and
8 elsewhere, to post their advertising message and a link to their website above and next to search
9 results in response to search queries relevant to the advertiser.

10 72. Online pharmacies advertise through various Google services including the
11 Company’s largest advertising program, AdWords. AdWords displays sponsored advertisements in
12 response to queries by the Company’s search engine users. In addition, advertisers are able to “geo-
13 target” their advertising campaigns by selecting the countries where the advertisements will display.
14 In return for these services, advertisers pay fees to Google for each advertisement. Most advertisers
15 pay Google on a cost-per-click basis, meaning the more a person (or people) clicks on an ad, the
16 more Google is paid. Google does, however, also offer a cost-per-impression basis, where an
17 advertiser will pay Google based on the number of times its ads appear on Google’s websites. In
18 order to place an ad with Google, advertisers bid, in an auction-like format, on keywords in order to
19 have their advertisements appear when the user enters the selected keywords into the Company’s
20 search engine. A keyword is a specific word or phrase selected by the advertiser that the Company
21 uses to trigger the display of advertisements in response to a user’s query. When Google first began
22 accepting advertising, the Company prohibited certain ads – such as ads for tobacco products or ads
23 that contain potentially misleading content – but did not attempt to stop advertising for controlled
24 prescription drugs, or filter out ads by “rogue” pharmacies that engaged in illegal practices.

25 73. As a U.S. company, Google is subject to the FD&C Act, which prohibits foreign
26 pharmacies from introducing or delivering prescription drugs into interstate commerce. The FD&C
27 Act also prohibits the shipment of prescription drugs from pharmacies outside the United States.
28

1 Similarly, the Controlled Substances Act of 1970 prohibits the shipment of controlled prescription
2 drugs into the U.S. from overseas pharmacies.¹

3 74. The U.S. government uses these laws to ensure the safety of drugs that are sold in the
4 U.S. If the drugs do not come from U.S. pharmacies, the Food and Drug Administration (“FDA”)
5 has no way to ensure they meet its labeling, manufacturing, storage and distribution requirements.
6 Often, drugs originating from foreign sources are not dispensed to patients pursuant to a valid
7 prescription. Instead, many times an online user does not even need to see a doctor, and instead
8 simply has to fill out an online form. This allows dangerous and addictive drugs to get into the
9 hands of users without proper oversight by the FDA or a healthcare provider.

10 75. Although Canada has its own regulatory regime for prescription drugs, Canadian
11 pharmacies that ship prescription drugs to U.S. residents are not subject to Canadian regulatory
12 authority. Further, many online Canadian pharmacies sell drugs obtained from countries other than
13 Canada, where pharmacy regulations are lacking.

14 76. By 2003, Google in general, and defendants Schmidt, Page and Brin in particular, had
15 become aware of the risks of sponsoring ads by pharmacies outside the U.S. Nevertheless, when
16 faced with illegal Canadian pharmacy ads, defendants resisted internal and external efforts to
17 develop a more restrictive policy for Canadian online pharmacy ads, and/or made superficial
18 changes to the policy so that Canadian online pharmacies could continue to illegally sell drugs via
19 Google’s website.

20 77. For example, in March 2003, the NABP, the preeminent professional organization in
21 the U.S. that supports the state boards of pharmacy in protecting public health, warned Google’s then
22 Healthcare Vertical Market Manager, Belliveau, about the dangers of illegal online pharmacies, the

24 ¹ Not all prescription drugs are listed as controlled prescription drugs in the Controlled
25 Substances Act. Many prescription drugs are listed in Schedules II through V of the Controlled
26 Substances Act because of their high potential for abuse or addiction. Schedule II through V
27 prescription drugs primarily are narcotic pain relievers and central nervous system depressants and
28 stimulants. A complete list of controlled prescription drugs, by schedule, is available on the DEA
Office of Diversion Control Internet site ([http://www.deadiversion.usdoj.gov/schedules/
index.html](http://www.deadiversion.usdoj.gov/schedules/index.html)).

misleading nature of Google’s “sponsored links” for these sites, and the U.S. federal laws which Google may be violating. The NABP also warned that it was “deeply concerned that these rogue Internet [pharmacy] sites could be a front for criminals seeking to introduce adulterated medications, counterfeit drugs, or worse, to the American market.”

78. To protect its business and consumers, the NABP recommended to Google that it limit sponsored links to only pharmacies certified by the VIPPS program. VIPPS is the leading pharmacy accreditation service in the country. It was created by a coalition of state and federal regulatory associations, professional associations, and consumer advocacy groups who developed the criteria which VIPPS uses to accredit pharmacies. VIPPS conducts on-site inspections of pharmacies, has a stringent standard against the issuance of prescriptions based on an online consultation without a physical examination and, importantly, does not certify Canadian online pharmacies that ship to U.S. patients. However, Google rejected NABP’s recommendations.

79. Similarly, on or about December 1, 2003, Peter J. Pitts, the FDA’s Associate Commissioner for External Affairs, stated that the FDA was “literally placing calls to the search engines trying to get a meeting going” concerning their business dealings with online pharmacies. Around the same time, Google was also contacted by the father of a teenage boy who was hospitalized after he used the Company’s search engine to locate and order Vicodin², which the Company said it took “very seriously.”

80. Mounting public and private pressure forced defendants to make minor improvements to Google’s advertising policy but they refused to use a robust system like the one offered by VIPPS or to prevent Canadian pharmacies from advertising altogether. On December 1, 2003, Google announced it would use a third-party company to screen out ads from rogue pharmacies that do not require prescriptions. The release never mentioned how Google would treat Canadian pharmacies in the new plan. Google’s decision only came several weeks after rival companies, Yahoo and Microsoft, began banning similar advertising. Furthermore, the FDA began publicly pressuring

² Vicodin is a trademark name for commercially available hydrocodone, a controlled substance and a synthetic opiate.

1 search engines to accept drug ads from only licensed Internet pharmacies, and the Senate Permanent
2 Subcommittee on Investigations began probing the role of companies that advertise illegal
3 prescription drugs – before which Google’s Vice President of Global Online Sales & Operations,
4 Sandberg, soon testified. *See infra*.

5 **Defendants Permitted Company Employees to Assist Canadian**
6 **Online Pharmacies in Evading Google’s Controls**

7 81. Despite knowing that it was illegal for pharmacies to ship prescription drugs to the
8 United States from Canada, and that U.S. consumers were purchasing prescription drugs online that
9 were advertised through Google’s AdWords, defendants consciously endorsed the Company’s
10 improper business strategy of permitting Canadian pharmacies to advertise through AdWords and
11 direct their advertisements at U.S. customers. Specifically, the verification service providers
12 selected to screen pharmacies certified Canadian pharmacies instead of filtering them out. In
13 addition, defendants permitted Google employees to assist Canadian online pharmacy advertisers in
14 creating advertisements that were designed to evade the internal controls put in place to detect and
15 prevent foreign pharmaceutical companies from advertising on Google. It is well established that
16 causing a company to operate in violation of the law is a breach of a fiduciary’s duty of loyalty. The
17 Individual Defendants’ instruction that the Company break the law in order to maximize short term
18 profits is a breach of their duty of loyalty.

19 82. In 2004, despite knowing that Canadian pharmacies were illegally advertising and the
20 NABP’s warnings and widespread criticisms, Google announced that its policy was to permit
21 Canadian pharmacies to advertise through AdWords, and actively block ads only from pharmacies in
22 other countries. Google put this policy into practice through its retention of a third-party verification
23 service, SquareTrade, Inc. (“SquareTrade”), to verify that online pharmacy advertisers were licensed
24 in at least one state in the United States or Canada. SquareTrade, which offers its seal of approval
25 for a wide range of online businesses ranging from cars to realtors, had a very low standard for
26 approval of pharmacies. But SquareTrade was nothing more than window dressing.

27 83. Unlike VIPPS, SquareTrade did not conduct on-site inspections and simply required
28 pharmacies seeking to advertise through AdWords to self-certify that they would act in accordance

1 with applicable U.S. laws and regulations. Moreover, SquareTrade certified online pharmacies as
2 long as they were licensed in one state in the United States or in Canada. Consequently, Canadian
3 online pharmacies could advertise prescriptions through AdWords to U.S. customers. Indeed,
4 defendant Schmidt admitted in his correspondence with Senator Cornyn that, despite knowing about
5 the illegal pharmacy advertisements since 2004, defendants made a conscious decision to allow
6 Canadian pharmacies to post the illegal advertisements based on “a continuing discussion involving
7 a variety of policy and implementation questions over several years.” These duplicitous decisions
8 reflect defendants’ knowledge that it was illegal for pharmacies to ship prescription drugs to the
9 United States from outside the country.

10 84. Google’s sponsorship of Canadian pharmacy ads brought widespread criticism. On
11 June 9, 2004, the *Wall Street Journal* (“WSJ”) reported that Google’s decision to continue to carry
12 Canadian ads drew criticism from U.S. regulators and angered U.S. druggists. Pitts, an FDA official,
13 explained he was “disappointed” in Google’s decision, criticizing its pursuit of illegal profit: “You
14 can’t make value judgments based on what is or is not in your financial interests” Likewise,
15 state pharmacy boards disapproved of the Company’s decision, calling on Google and other search
16 providers to use VIPPS to screen out Canadian pharmacies – just as the NABP advised Google to do
17 in March 2003, described *supra*.

18 85. The need to resist sponsoring ads by rogue pharmacies was well-known to the
19 Company and defendants. Not just one, but two high-level Google officials appeared before
20 congressional committees claiming that Google guarded against such advertisements. Sandberg,
21 then Google’s Vice President of Global Online Sales & Operations, attempted to tout Google’s
22 “proactive” use of SquareTrade in her testimony to the Senate’s Permanent Subcommittee on
23 Investigations on July 22, 2004. Despite Sandberg’s characterization of SquareTrade as using a
24 “rigorous” verification process, defendants knew that it still allowed Canadian pharmacies to post
25 illegal advertisements via Google. On December 13, 2005, a second high-ranking Company official,
26 Andrew McLaughlin, then Google’s Director of Global Public Policy, again hyped SquareTrade’s
27 verification process in similar testimony to the House Subcommittee on Oversight and
28 Investigations.

1 86. Although SquareTrade-certified pharmacies were supposedly in compliance with
2 pharmacy laws and practices, the Company knew that many Canadian online pharmacies were
3 committing rampant violations. Many of these pharmacies distributed prescription drugs, including
4 controlled prescription drugs, based on an online consultation, rather than a valid prescription from a
5 treating medical practitioner despite SquareTrade’s purported dispensing requirements. As the DOJ
6 non-prosecution agreement makes clear, the Company was also on notice that many of these
7 pharmacies charged a premium for doing so, because individuals seeking to obtain prescription
8 drugs without a valid prescription were willing to pay higher prices for the drugs.

9 87. For example, in July 2004, defendants learned that online pharmacies were
10 circumventing SquareTrade’s certification process by intentionally avoiding the use of
11 pharmaceutical terms in the text of their AdWords advertisements, while using the same terms as
12 advertising “keyword” terms. A keyword is a specific word or phrase used by an advertiser that
13 Google uses to trigger the display of advertisements in response to a user’s query. Advertisers bid,
14 in an auction-like format, on keywords in order to have their advertisements appear when the user
15 enters the selected keywords into the Company’s search engine. Once Google began using
16 SquareTrade, it conducted a manual review of non-certified online pharmacy advertisements only if
17 a pharmaceutical term appeared in the text of the advertisement. Defendants knew, however, that
18 some pharmacy advertisers, including some from Canada, avoided this review by using the
19 prescription drug terms as keywords only and not in advertising text.

20 88. Google also knew that SquareTrade-certified Canadian pharmacies broke their
21 “promise” not to target U.S. consumers. From 2003 through 2009, Google provided customer
22 support to a number of these Canadian online pharmacy advertisers, including assisting them in
23 placing and optimizing their AdWords advertisements, despite knowing that these advertisers were
24 attempting to actively violate U.S. federal drug laws. For example, on or about April 23, 2004, a
25 Google employee based in Canada stated that, in connection with the advertisements of a large
26 Canadian pharmacy, “the Google team is proactively adjusting creative and optimizing with Square
27 Trade policy in mind.” About a month later, on or about June 4, 2004, the same employee emailed a
28 member of the Company’s policy group and stated “[t]he Max team and [customer support] are sort

1 of furiously working on creative to appease our new policy before approvals gets to them and
2 disapproves.”

3 89. Moreover, Google permitted Canadian pharmacy advertisers to intentionally geo-
4 target the United States in their AdWords campaigns. Google was aware of this practice, according
5 to an August 23, 2005 e-mail by an employee in the Company’s policy group that stated “the
6 majority of Canadian Pharmacies are in business to drive pharmacy traffic from the United States to
7 Canada” and “target the US in their geo-targeting.”

8 90. When Google changed third-party verification providers in 2006, the Company
9 continued to receive reports that online Canadian pharmacies were breaking U.S. law with Google’s
10 assistance. PharmacyChecker.com LLC (“PharmacyChecker”), Google’s new third-party
11 verification provider, also certified Canadian pharmacies, and was intended to screen out advertisers
12 of controlled prescription drugs. Defendants, however, knew that PharmacyChecker did not prevent
13 Canadian pharmacies from advertising on AdWords and was otherwise ineffective, and that VIPPS
14 was still the only viable option.

15 91. On July 7, 2008, Joseph A. Califano, Jr., head of the National Center on Addiction
16 and Substance Abuse at Columbia University (“CASA”), described PharmacyChecker’s faults and
17 warned defendant Schmidt, then Google’s Chairman and CEO, about Google’s illicit revenue:

18 Although Google reports using a company called PharmacyChecker to screen
19 out rogue pharmacies, CASA was able to find prominent displays of ads for rogue
20 Internet pharmacies in a Google search for controlled drugs included in our analysis.
This suggests that Google is profiting from advertisements for illegal sales of
controlled prescription drugs online.

21 Califano, a former U.S. Secretary of Health, Education, and Welfare, advised Google to take
22 immediate action to “[b]lock all advertisements . . . that do not come from licensed or certified
23 online pharmacies;” “[s]creen such sites from Internet searches;” and “[p]rovide warnings that sale
24 and purchase of controlled drugs over the Internet from unlicensed pharmacies and physicians
25 without valid prescriptions are illegal.” Califano enclosed CASA’s 2008 report entitled “You’ve
26 Got Drugs! V: Prescription Drug Pushers on the Internet,” which highlighted the fact that
27 approximately 85% of websites selling controlled prescription drugs did not require a legitimate
28 prescription in 2007 and 2008. The CASA report also mentioned various verification programs:

VIPPS employed a “rigorous” program, whereas PharmacyChecker’s process was “far from perfect.”

92. Likewise, in a December 23, 2008 letter to defendant Schmidt, the NABP again recommended replacing Google’s third-party verification service with one that actually adheres to pharmacy laws and practice standards. Principal among PharmacyChecker’s flaws were that it certified sites that did not require a valid prescription and sourced their prescriptions from outside the U.S in contravention of U.S. law. Moreover, the NABP warned defendant Schmidt that “your sponsorship of these search results, and your third-party verification service’s certification of these Web sites, aids in a business practice that is contrary to US law, unsafe, and deceptive to US patients.”

93. The NABP explained that Canadian pharmacists selling drugs to the United States online can skirt Canadian regulation. Furthermore, the NABP also explained that many of the prescription drugs originate in third-world countries, “a practice that would not be considered lawful or safe were the final customer within Canada, or if a US pharmacy were dispensing prescription drugs to a US resident.”

94. A report published in 2009 by Bryan A. Liang, a California Western School of Law Professor, roundly criticized PharmacyChecker, finding that although PharmacyChecker purportedly “verifies” the legitimacy of online pharmacies, “little verification of potential advertisers actually takes place.” As a result, Google and other search engines were profiting from the online ads of illegal drug sellers, while at the same time “exert[ing] very little effort to ensure that online drug sellers from which they obtain advertisement revenue are legitimate.” Professor Liang stated in the WSJ on May 21, 2011 that “[o]n the basis of our analysis, I think [Google and other search providers] were turning a blind-eye They were making a lot of money on this.”

Google Sponsors Rogue Sites that Circumvent Verification

95. As early as July 2004, the Company was on notice that online pharmacies were circumventing the SquareTrade and PharmacyChecker certification process by intentionally avoiding the use of certain pharmaceutical terms in the text of their AdWords advertisements, while using these same terms as advertising “keyword” terms, explained *supra*. Once the Company began using

1 SquareTrade, and continuing throughout the period during which the Company used
2 PharmacyChecker, the Company conducted a manual review of non-certified online pharmacy
3 advertisements only if a pharmaceutical term appeared in the text of the advertisement.

4 96. Additionally, defendants knew or recklessly disregarded that the Canadian online
5 pharmacies, with the assistance of Google employees, were continuing to employ the same tricks to
6 circumvent PharmacyChecker's certification process as they had when the Company used
7 SquareTrade's services, including avoiding manual review of the advertisements by using
8 pharmaceutical terms as keywords only and not in advertising text. For example, in a February 13,
9 2008 e-mail, a member of the Company's policy group stated, "[t]he only ads that are getting
10 blocked are those with explicit pharma terms in the ad texts; the shady, fraudulent advertisers know
11 not to do this." After it became aware of the Government's investigation, the Company made
12 changes to its systems in order to flag for review all ads that had prescription drug terms as
13 keywords.

14 97. Some pharmacy advertisers that did not qualify for certification were also able to
15 advertise through AdWords by changing their geographic targets and avoiding the certification
16 process altogether. These online pharmacy advertisers initially prevented their AdWords
17 advertisements from being run in the U.S., so that they would not be required to obtain a
18 SquareTrade or PharmacyChecker certification. Once the advertisements began to run on the
19 Company's search engine, however, the pharmacies would change the geo-targeting of the
20 advertisements so that they would appear in the United States in response to queries by U.S. users of
21 the Company's search engine. Although defendants knew that some online pharmacies later
22 changed the geo-targeting of their AdWords advertising in order to avoid the certification
23 requirements, defendants did nothing to prevent or monitor any changes to the online pharmacies'
24 geo-targeting practices until after becoming aware of the DOJ's investigation.

25 98. In 2008, CASA published a report that found that 85% of the online pharmacies
26 advertising controlled drugs on search engines did not require a valid prescription. Also in 2008, a
27 NABP study estimated that 96% of internet drug outlets appeared to be in violation of pharmacy-
28 related laws or standards. In December 2008, the NABP wrote a letter to Google urging it to drop

1 PharmacyChecker as its third-party verification service, noting that the Company had let through
2 several advertisers “that source their prescription drugs from various locations outside of the United
3 States . . . which is contrary to US law.” The NABP also specifically advised Google that the
4 importation of prescription drugs from foreign countries is illegal.

5 99. Despite these multiple warnings, and the fact that defendant Schmidt admitted to
6 Senator Cornyn in testimony before a Senate subcommittee that he knew as early as 2004 that
7 pharmacies were advertising illegally via AdWords and that Google was not blocking ads from
8 Canadian pharmacies at all, defendants continued to allow Canadian online pharmacies to use
9 AdWords until 2009. Defendants also permitted Google to continue using PharmacyChecker until
10 2009, despite the existence of superior VIPPS service.

11 100. The U.S. Government and Google estimate that the total proceeds to the Company
12 and Canadian online pharmacy advertisers generated from the advertising and sale of controlled
13 prescription drugs by Canadian online pharmacies that advertised through the Company’s AdWords
14 program was approximately \$500 million.

15 **Google Belatedly Changes Its Advertising Policies After Various**
16 **Government Entities Begin Investigating Google**

17 101. It was only after defendants learned in May 2009 that the DOJ, the Rhode Island U.S.
18 Attorney’s Office, and the FDA/OCI, were investigating Google that the Company took any
19 significant steps to prevent the unlawful sale of prescription drugs by online Canadian pharmacies to
20 U.S. consumers. Google’s quick response after learning about the investigation shows that
21 defendants could have, at any time of the six-year long scheme, stopped the Company from assisting
22 online pharmacies in violating U.S. federal law but consciously chose not to.

23 102. Among other things, on February 9, 2010, Google finally updated its Pharmacy
24 Policy in the United States and Canada to require online pharmacy advertisers to be certified by
25 VIPPS. The updated Pharmacy Policy went into effect on February 23, 2010. The updated
26 Pharmacy Policy stated the following, in relevant part:

27 **Only VIPPS and CIPA certified pharmacies will be allowed to advertise**
28 We’ve made the decision to further restrict the ads we accept for online pharmacy
sites in the U.S. and Canada. Starting at the end of this month, Google AdWords will
only accept ads from online pharmacies in the U.S. that are accredited by the

1 National Association Boards of Pharmacy VIPPS program, and from online
2 pharmacies in Canada that are accredited by the Canadian International Pharmacy
Association (CIPA).

3 **Pharmacies can only target ads within their country**

4 These pharmacies may only target ads to users in the country in which they are
5 accredited. This policy change does not affect our online pharmacy policy for
countries outside the U.S. and Canada.

6 Accordingly, we'll no longer be using any 3rd party verifier of online pharmacies
7 other than VIPPS and CIPA. AdWords advertisers who aren't accredited by VIPPS
and CIPA will no longer see their online pharmacy ads displayed once this policy
change comes into effect.

8 103. In addition, Google retained an independent company to enhance its back-end
9 sweeps, which were designed to detect pharmacy advertisers exploiting flaws in the Company's
10 screening systems. Finally, Google began suing pharmacy advertisers that violated the Company's
11 terms of use and reporting suspected illegal pharmacies to the FDA.

12 104. However, Google's eleventh hour policy changes were too little, too late. And, on
13 August 19, 2011, as a direct result of defendants' disloyalty, Google was forced to pay \$500 million
14 as well as admit and accept responsibility for violating federal drug and cosmetic laws by allowing
15 Canadian online pharmacy advertisers to illegally sell prescription drugs via Google's website.

16 105. The Non-Prosecution Agreement accompanying Google's settlement with the DOJ
17 confirms that Google, at the highest levels, was aware of the illegal Canadian ads and the risks of
18 loss they presented to Google. For example, the Non-Prosecution Agreement states:

19 (f) As early as 2003, the Company was aware that in most circumstances
20 it was illegal for pharmacies to ship controlled and non-controlled prescription drugs
21 into the United States from Canada. For example, in March 2003 and again in
December 2008, the National Association of Boards of Pharmacy advised the
Company that the importation of prescription drugs from foreign countries is illegal.

22 106. The Non-Prosecution Agreement further states:

23 (g) The Company was aware that importation of prescription drugs to
24 consumers in the United States is almost always unlawful because the United States
25 Food and Drug Administration ("FDA") cannot ensure the safety and effectiveness
26 of foreign prescription drugs that are not FDA-approved and because the drugs may
27 not meet FDA's labeling requirements, may not have been manufactured, stored, and
28 distributed under proper conditions, and may not have been dispensed pursuant to a
valid prescription. While Canada had its own regulatory regime for prescription
drugs, Canadian pharmacies that ship prescription drugs to U.S. residents are not
subject to Canadian regulatory authority, and many sell drugs obtained from
countries other than Canada, which lack adequate pharmacy regulations.

1 107. Further still, the Non-Prosecution Agreement states:

2 (h) As early as 2003, the Company was on notice that online Canadian
3 pharmacies were advertising prescription drugs to the Company's users in the United
4 States through the Company's AdWords advertising program. Although the
5 Company took steps to block pharmacies in countries other than Canada from
6 advertising in the United States through AdWords, the Company continued to allow
7 Canadian pharmacy advertisers to geo-target the United States in their AdWords
8 advertising campaigns. The Company knew that U.S. consumers were making
9 online purchases of prescription drugs from these Canadian online pharmacies. For
10 example, in a November 18, 2003 email, a Company employee discussed the
11 advertising budgets of several Canadian online pharmacy advertisers and noted that
12 "[a]ll ship from Canada into the US via Express Mail." In an August 23, 2005 email,
13 an employee in the Company's policy group stated, "the majority of Canadian
14 Pharmacies are in business to drive pharmacy traffic from the United States to
15 Canada" and "target the US in their geo-targeting."

16 108. Moreover, the Non-Prosecution Agreement states:

17 (k) From 2003 through 2009, the Company provided customer support to
18 some of these Canadian online pharmacy advertisers to assist them in placing and
19 optimizing their AdWords advertisements and in improving the effectiveness of their
20 websites. For example, on or about April 23, 2004, a Google employee based in
21 Canada reported in an email concerning the advertisements of a large Canadian
22 pharmacy advertiser that "the Google team is proactively adjusting creative and
23 optimizing with Square Trade policy in mind." On or about June 4, 2004, the same
24 employee emailed a member of the Company's policy group and stated, "The Max
25 team and [customer support] are sort of furiously working on creative to appease our
26 new policy before approvals gets to them and disapproves."

27 109. On August 24, 2011, the DOJ issued a press release entitled "Google Forfeits \$500
28 million Generated by Online Ads & Prescription Drug Sales by Canadian Online Pharmacies."
Among other things, the press release emphasized that the amount forfeited by Google included the
gross revenues made by online Canadian pharmacies from their sales to U.S. consumers, stating:

Online search engine Google Inc. has agreed to forfeit \$500 million for allowing
online Canadian pharmacies to place advertisements through its AdWords program
targeting consumers in the United States, resulting in the unlawful importation of
controlled and non-controlled prescription drugs into the United States, announced
Deputy Attorney General James M. Cole; Peter F. Neronha, U.S. Attorney for the
District of Rhode Island; and Kathleen Martin-Weis, Acting Director of the U.S.
Food and Drug Administration's Office of Criminal Investigations (FDA/OCI). The
forfeiture, one of the largest ever in the United States, represents the gross revenue
received by Google as a result of Canadian pharmacies advertising through Google's
AdWords program, plus gross revenue made by Canadian pharmacies from their
sales to U.S. consumers.

The shipment of prescription drugs from pharmacies outside the United States
to customers in the United States typically violates the Federal Food, Drug and
Cosmetic Act and in the case of controlled prescription drugs, the Controlled
Substances Act. Google was aware as early as 2003, that generally, it was illegal for

1 pharmacies to ship controlled and non-controlled prescription drugs into the United
2 States from Canada.

3 The importation of prescription drugs to consumers in the United States is
4 almost always unlawful because the FDA cannot ensure the safety and effectiveness
5 of foreign prescription drugs that are not FDA-approved because the drugs may not
6 meet FDA's labeling requirements; may not have been manufactured, stored and
7 distributed under proper conditions; and may not have been dispensed in accordance
8 with a valid prescription. While Canada has its own regulatory rules for prescription
9 drugs, Canadian pharmacies that ship prescription drugs to U.S. residents are not
10 subject to Canadian regulatory authority, and many sell drugs obtained from
11 countries other than Canada which lack adequate pharmacy regulations.

12 "The Department of Justice will continue to hold accountable companies who
13 in their bid for profits violate federal law and put at risk the health and safety of
14 American consumers," said Deputy Attorney General Cole. "This settlement ensures
15 that Google will reform its improper advertising practices with regard to these
16 pharmacies while paying one of the largest financial forfeiture penalties in history."

17 "This investigation is about the patently unsafe, unlawful, importation of
18 prescription drugs by Canadian on-line pharmacies, with Google's knowledge and
19 assistance, into the United States, directly to U.S. consumers," said U.S. Attorney
20 Neronha. "It is about taking a significant step forward in limiting the ability of rogue
21 on-line pharmacies from reaching U.S. consumers, by compelling Google to change
22 its behavior. It is about holding Google responsible for its conduct by imposing a
23 \$500 million forfeiture, the kind of forfeiture that will not only get Google's
24 attention, but the attention of all those who contribute to America's pill problem."

25 "Today's agreement demonstrates the commitment of the Food and Drug
26 Administration to protect the US consumer and hold all contributing parties
27 accountable for conduct that results in vast profits at the expense of the public
28 health," said FDA/OCI Acting Director Martin-Weis. "The result of this
investigation has been a fundamental transformation of Internet pharmacy
advertising practices, significantly limiting promotion to US consumers by rogue
online pharmacies. This accomplishment could not have been possible without the
resourceful commitment of the Rhode Island United States Attorney's Office, as well
as the tireless efforts of our law enforcement partners detailed to the OCI Rhode
Island Task Force."

29 An investigation by the U.S. Attorney's Office in Rhode Island and the
30 FDA/OCI Rhode Island Task Force revealed that as early as 2003, Google was on
31 notice that online Canadian pharmacies were advertising prescription drugs to
32 Google users in the United States through Google's AdWords advertising program.
33 Although Google took steps to block pharmacies in countries other than Canada
34 from advertising in the U.S. through AdWords, they continued to allow Canadian
35 pharmacy advertisers to target consumers in the United States. Google was aware
36 that U.S. consumers were making online purchases of prescription drugs from these
37 Canadian online pharmacies, and that many of the pharmacies distributed
38 prescription drugs, including controlled prescription drugs, based on an online
consultation rather than a valid prescription from a treating medical practitioner.
Google was also on notice that many pharmacies accepting an online consultation
rather than a prescription charged a premium for doing so because individuals
seeking to obtain prescription drugs without a valid prescription were willing to pay
higher prices for the drugs.

1 Further, from 2003 through 2009, Google provided customer support to some
2 of these Canadian online pharmacy advertisers to assist them in placing and
3 optimizing their AdWords advertisements, and in improving the effectiveness of
4 their websites.

5 In 2009, after Google became aware of the investigation by the Rhode Island
6 U.S. Attorney's Office and the FDA/OCI Rhode Island Task Force of its advertising
7 practices in the online pharmacy area, and as a result of that investigation, Google
8 took a number of steps to prevent the unlawful sale of prescription drugs by online
9 pharmacies to U.S. consumers. Among other things, Google began requiring online
10 pharmacy advertisers to be certified by the National Association of Boards of
11 Pharmacy's *Verified Internet Pharmacy Practices Sites* program, which conducts site
12 visits; has a stringent standard against the issuance of prescriptions based on online
13 consultations; and, most significantly, does not certify Canadian online pharmacies.
14 In addition, Google retained an independent company to enhance detection of
15 pharmacy advertisers exploiting flaws in the Google's screening systems.

16 Under the terms of an agreement signed by Google and the government,
17 Google acknowledges that it improperly assisted Canadian online pharmacy
18 advertisers to run advertisements that targeted the United States through AdWords,
19 and the company accepts responsibility for this conduct. In addition to requiring
20 Google to forfeit \$500 million, the agreement also sets forth a number of compliance
21 and reporting measures which must be taken by Google in order to insure that the
22 conduct described in the agreement does not occur in the future.

23 The investigation of Google had its origins in a separate, multimillion dollar
24 financial fraud investigation unrelated to Google, the main target of which fled to
25 Mexico. While a fugitive, he began to advertise the unlawful sale of drugs through
26 Google's AdWords program. After being apprehended in Mexico and returned to the
27 United States by the U.S. Secret Service, he began cooperating with law enforcement
28 and provided information about his use of the AdWords program. During the ensuing
investigation of Google, the government established a number of undercover
websites for the purpose of advertising the unlawful sale of controlled and non-
controlled substances through Google's AdWords program.

110. Later on the same date, Google acknowledged that it should not have allowed illegal
Canadian drug ads, stating:

We banned the advertising of prescription drugs in the U.S. by Canadian pharmacies
some time ago. However, it's obvious with hindsight that we shouldn't have allowed
these ads on Google in the first place. Given the extensive coverage this settlement
has already received, we won't be commenting further.

111. Jason Helfstein, an Internet research analyst at Oppenheimer & Co., said that while
the penalty imposed by the DOJ was large, what is more distressing for Google is the blow to its
reputation. "The most surprising thing isn't the amount of money, it is that Google made a mistake
with its ads, and Google doesn't usually make mistakes," he said.

1 112. According to an article by the Associated Press entitled, "Google settles Pharmacy ad
2 probe for \$500 million," the settlement "delivered a stinging rebuke for Google, whose motto is
3 'don't be evil.'" The article further stated the following:

4 In announcing the settlement, authorities left little doubt that Google had
5 misbehaved. From its vantage point, Google crossed into a shady area of
6 prescription-drug advertising in pursuit of higher profits, which have boosted its
stock price and enriched its employees since the company's initial public offering in
2004.

7 In that sense, the potential damage to Google's reputation may be more
8 troubling to the company than the amount of money it's paying to sweep the problem
9 under the rug. The \$500 million is a sum Google can easily afford; it had \$39 billion
in cash at the end of June.

10 * * *

11 A separate U.S. Food and Drug Administration investigation into drugs that
12 claimed to be manufactured in Canada found that 85 percent of the drugs examined
13 came from 27 different countries, including some that were found to be counterfeit,
said Kathleen Martin-Weis, acting director of the FDA's Office of Criminal
Investigations.

14 Investigators noted that Google did not allow online pharmacies from any
other country aside from Canada to advertise to American consumers.

15 The probe did not touch the overseas online pharmacies, Neronha said,
16 because American officials did not have the authority to bring charges. He said the
case raised some "novel legal theories," given that if it had gone to trial, prosecutors
would have to prove an Internet search engine helped pharmacies violate federal law.

17 Investigators snared Google's ad system by creating seven undercover
18 websites offering prescription drugs to be sold without a prescription or the
completion of an online medical questionnaire, Martin-Weis said. An undercover
19 investigator informed Google employees creating the advertising for the products
that they were manufactured overseas and did not require customers to have a valid
20 prescription, she said.

21 "In each instance, despite this knowledge, Google employees created a full
22 advertising campaign for each of the undercover websites," Martin-Weis said.

23 Investigators said they quickly spent the money they had set aside for the ad
buys and then pored over 4 million pages of e-mails and financial records to make
24 their case. The undercover websites were live for four months, investigators said.

25 113. On August 27, 2011, the WSJ published an article entitled, *New Heat for Google*
26 *CEO*. The article emphasized that defendant Page, as the "public face of Google" "knew of, and
27 allowed, the ads for years." Further, the article stated, in relevant part:

28 Sorting through more than four million documents, prosecutors found internal
emails and documents that, they say, show Mr. Page was aware of the allegedly illicit

1 ad sales. Under this week's \$500 million settlement, those emails won't be released,
2 avoiding the possibility of disclosure at trial.

3 "Larry Page knew what was going on," Peter Neronha, the Rhode Island U.S.
4 Attorney who led the probe, said in an interview. "We know it from the
5 investigation. We simply know it from the documents we reviewed, witnesses that
6 we interviewed, that Larry Page knew what was going on."

7 * * *

8 Mr. Neronha didn't say when the Justice Department believes Mr. Page
9 learned of the matter, though people familiar with the investigation allege it was
10 several years ago. He declined to discuss the content of the emails, citing grand jury
11 secrecy.

12 * * *

13 Mr. Page, 38 years old, five months ago assumed direct leadership of Google
14 as chief executive. Mr. Page has increasingly become the public face of Google as it
15 navigates a thicket of government investigations.

16 The Justice Department contends that Google knew it was potentially
17 violating U.S. law since at least 2003, but didn't take effective action to ban the ads
18 until it mounted an undercover sting operation against the Internet search giant in
19 2009.

20 In the years leading up to the investigation, senior Google executives testified
21 repeatedly in Congress that the company had "rigorous" controls to stop unlawful
22 advertisements. Those included retaining a series of third-party services to screen out
23 sites that didn't comply with U.S. law.

24 But Mr. Neronha said those efforts amounted to "window-dressing," allowing
25 Google to continue earning revenues from the allegedly illicit ad sales even as it
26 professed to be taking action against them.

27 Google employees helped undercover Justice Department agents in the sting
28 operation evade controls designed to stop companies from advertising illegally, he
said.

"Suffice it to say that this is not two or three rogue employees at the customer
service level doing this on their own," Mr. Neronha said in an interview. "This was a
corporate decision to engage in this conduct."

U.S. state pharmacy regulators warned Google in 2003 and 2008 that the
importation of drugs from abroad was illegal, according to letters reviewed by The
Wall Street Journal. Google allowed ads from Canadian online pharmacies to target
U.S. consumers until 2009, when it became aware of the government investigation,
the Justice Department contends.

114. In fact, defendant Schmidt admits that he knew about and sanctioned Google's illegal
ad strategy since 2004, stating in testimony before the U.S. Senate, "I believe I first learned of this
issue around [2004] through meetings and internal discussions." As Schmidt also stated in his later

1 written responses to inquiries from Senator Cornyn, “not blocking licensed Canadian pharmacies
2 certified by SquareTrade and PharmacyChecker from advertising in the United States was the result
3 of a continuing discussion involving a variety of policy and implementation questions over several
4 years, and involved many employees in the company beyond those on the policy team.”

5 **DAMAGE TO GOOGLE**

6 115. Google has been, and will continue to be, severely damaged and injured by
7 defendants’ misconduct. Further, as a direct and proximate result of defendants’ breach of loyalty,
8 Google has expended and will continue to expend significant sums of money. These expenditures
9 include, but are not limited to: (i) costs incurred from the investigations into the Company’s
10 acceptance of advertisements placed by online pharmacy advertisers that violated federal law;
11 (ii) costs incurred from the compensation and benefits paid to the defendants that breached their
12 fiduciary duties to the Company; (iii) the \$500 million revenue forfeiture, fines, penalties and
13 disgorgement resulting from the Company’s violations of the federal law; and (iv) the cost of
14 implementing the settlement with the DOJ.

15 116. In addition, Google’s business, goodwill, and reputation with its business partners,
16 regulators, and shareholders have been gravely impaired. Moreover, Google’s corporate motto,
17 “Don’t be evil,” is now in question and the Company’s hard earned reputation as a good corporate
18 citizen has been rendered meaningless by defendants’ fiduciary breaches. For at least the
19 foreseeable future, Google will suffer from what is known as the “liar’s discount,” a term applied to
20 the stocks of companies who have been implicated in improper behavior and have misled the
21 investing public, such that Google’s ability to raise equity capital or debt on favorable terms in the
22 future is now impaired.

23 117. Nevertheless, the Google Board has taken no action against the directors and officers
24 responsible for the damage and injury to the Company, including themselves. By this action,
25 plaintiffs seek redress for and vindication of Google’s rights against its wayward fiduciaries.

26 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

27 118. Plaintiffs incorporate ¶¶1-117.
28

1 119. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedures, plaintiffs bring this
2 action for the benefit of Google to redress injuries suffered, and to be suffered, by Google as a result
3 of the defendants' breaches of fiduciary duty, abuse of control, corporate waste and unjust
4 enrichment. Google is named as a nominal party in this action solely in a derivative capacity.

5 120. Plaintiffs will adequately and fairly represent the interests of Google and its
6 shareholders in enforcing and prosecuting the derivative claims.

7 121. At the time of the filing of this action the Google Board consists of the following nine
8 individuals: Page, Brin, Schmidt, Doerr, Hennessy, Otellini, Shriram, Tilghman and non-defendant
9 Ann Mather.

10 122. Plaintiffs did not make a pre-suit demand on the Google Board, because such a
11 demand would have been a useless and futile act, and, therefore, is excused. More particularly, a
12 majority of the Google Board is not disinterested or independent, because three directors – Schmidt,
13 Page and Brin are not disinterested as they face a substantial likelihood for breach of loyalty. These
14 defendants were aware of the illegal Canadian ads by October 2003. However, when faced with this
15 illegality, they continued Google's policy for pharmacy advertisers in a manner that allowed
16 Canadian online pharmacies to illegally sell prescription drugs via Google's website. *See* ¶¶6, 28-
17 70, *infra*. Similarly, three directors –Tilghman, Hennessy and Shriram – lack independence from
18 one or more “interested” directors Schmidt, Page and/or Brin, because they are executives and/or
19 trustees of Princeton and/or Stanford Universities, where Schmidt, Page and Brin are alumni, and
20 because the Universities have received tens of millions of dollars from Schmidt or Google. *See* ¶¶8,
21 124-127.

22 **Demand Is Excused Because Defendants Page, Brin and**
23 **Schmidt Dominate and Control the Board by Virtue of**
Their Majority Shareholder Voting Power

24 123. Google's Board is dominated and controlled by defendants Page and Brin, co-
25 founders of Google, and defendant Schmidt, the Company's long time CEO, by way of their
26 majority shareholder voting power. Page controls 28.4% of shareholder voting power, Brin controls
27 28% of shareholder voting power, and Schmidt controls 9.5% of shareholder voting power.
28 Combined, Page, Brin and Schmidt control two-thirds of the shareholder vote. As disclosed in the

1 Company's Form S-1 filed with the SEC on April 29, 2004, defendants Schmidt, Page and Brin
2 "operate the company collectively and . . . consult extensively with each other before significant
3 decisions are made."

4 **Defendants Hennessy, Shriram, Tilghman and Doerr**
5 **Are Not Independent from Interested Directors**
6 **Schmidt, Page and Brin**

7 124. Due to their interrelated business, professional and personal relationships, certain
8 defendants have developed debilitating conflicts of interest that prevent them from taking the
9 necessary and proper action on behalf of the Company as requested herein. For example, demand is
10 futile and thus excused because defendants Tilghman, Shriram, Hennessy and Doerr are not
11 independent of Page, Brin and Schmidt.

12 **Defendants Hennessy and Shriram Are Not Independent from Interested**
13 **Directors Page, Brin and/or Page and Brin**

14 125. Defendant Hennessy is the President of Stanford University and defendant Shriram
15 serves on the Stanford board of trustees. Google, at the direction of defendants Page and Brin,
16 Stanford graduates, donates millions of dollars every year to Stanford University. Since 2006,
17 Google has donated over \$14.4 million to Stanford University. If Hennessy or Shriram voted to
18 initiate litigation against Page and Brin, they would effectively cause Google to stop making its
19 multi-million dollar yearly donation to Stanford University. This outcome would be particularly
20 disastrous to defendant Hennessy, because one of his principle duties as President of Stanford
21 University is ensure continued alumni support. Hennessy and Shriram will not risk their prestigious
22 positions at Stanford University or Google's continued support of the University by voting to initiate
23 litigation against Page or Brin. Accordingly, defendants Hennessy and Shriram lack independence
24 from Page, Brin and/or Page and Brin, rendering a pre-suit demand on them futile.

25 **Defendant Tilghman Is Not Independent from Interested Director Schmidt**

26 126. Defendant Tilghman is the President of Princeton University. Prior to becoming
27 President, Tilghman was a Professor of Life Sciences at Princeton. Defendant Schmidt has donated
28 tens of millions of dollars to Princeton University. For instance, on October 13, 2009, Princeton
University announced that Schmidt created a \$25 million endowment fund at Princeton University.

1 Tilghman heaped praise on Schmidt for providing Princeton University with this generous gift,
2 stating “This fund will allow Princeton’s scientists and engineers to explore truly innovative ideas
3 that need the creation or application of new technologies, including the kinds of technological
4 breakthroughs that most funding sources are too risk-averse to support.” Tilghman continued, “We
5 are deeply grateful to Eric and Wendy [defendant Schmidt’s wife] not only for providing this
6 support, but for providing the capacity and flexibility to make investments that are likely to have the
7 broadest and most transformative impact.” Schmidt is a graduate of Princeton University and served
8 as a trustee of the university from 2004 to 2008, at the same time as Tilghman served as a trustee of
9 the university. During that time, Schmidt, as a trustee, exercised substantial control over Tilghman’s
10 compensation and continued employment. Tilghman will not vote to initiate litigation against
11 Schmidt out of loyalty for his past acts to her and Princeton University and because it would all but
12 ensure that Schmidt would not provide any future donations to Princeton University. Accordingly,
13 as the Court’s Order holds, defendant Tilghman lacks independence from interested defendant
14 Schmidt, rendering a pre-suit demand on her futile.

15 **Defendant Doerr Is Not Independent from**
16 **Interested Directors Schmidt, Brin and/or Page**

17 127. Defendant Doerr is a general partner at Kleiner Perkins Caufield & Byers, a venture
18 capital firm. Doerr has sought and obtained substantial investments from Google in private
19 companies that Kleiner Perkins Caufield & Byers is a major investor in through certain of its funds.
20 Doerr is the managing director of these investment funds. In 2007, Google bought Peakstream, Inc.
21 for \$20.3 million. Kleiner Perkins Caufield & Byers, as part owner of Peakstream, received 24.5%
22 of that amount (approximately \$5 million). Since that time, Google has continued to invest in
23 companies in which Kleiner Perkins Caufield & Byers also had major investments. Since 2008,
24 Google has invested \$47.5 million in companies Kleiner Perkins Caufield & Byers also invested in.
25 In 2010 alone, Google, at the direction of defendants Page, Brin and Schmidt, invested over \$21
26 million in companies in which Kleiner Perkins Caufield & Byers has a substantial interest. If Doerr
27 voted in favor of initiating litigation against Page, Brin or Schmidt, he would risk Google’s
28 continued financial support in companies he has as major investments. Doerr will not take such a

1 risk. Accordingly, defendant Doerr is not independent from “interested” directors Schmidt, Page
2 and Brin, whether viewed collectively or individually. As such, a pre-suit demand on Doerr is futile.

3 **Demand Is Excused Because Schmidt, Page and Brin**
4 **Are Interested Because Each Faces a Substantial**
5 **Likelihood of Liability for Breach of Loyalty Arising**
6 **from Their Knowledge of and Faithless Response to**
7 **the Illegal Canadian Ads**

8 128. As detailed in ¶¶6, 28-70, defendants Schmidt, Page and Brin knew Google was
9 facilitating the sale of Canadian prescription drugs to U.S. consumers and that such sales were
10 illegal. The Google Board received a blizzard of warnings that did or would have alerted them to the
11 wrongdoing occurring at Google if these defendants had not recklessly been performing their duties.

12 129. At all relevant times, defendants Schmidt, Page and Brin were the three top level
13 executives at Google, and thus necessarily played an active role in approving the verification service
14 the Company used to screen ads. Further, as key executives at Google, defendants Schmidt, Page
15 and Brin were at least reckless if they did not know about the illegal online pharmaceutical
16 advertising, considering the significant source of revenue Google received from the illegal
17 advertisements, and that illegal ads were blatantly being issued with the aid of Google employees.
18 Furthermore, as directors at the time, defendants Schmidt, Page and Brin knew the ad policy
19 constituted a violation of federal law.

20 130. Plaintiffs have not made any demand on shareholders of Google to institute this
21 action since such demand would be a futile and useless act for the following reasons:

22 (a) Google is a publicly traded Company with approximately 323 million shares
23 outstanding, and thousands of shareholders;

24 (b) Making demand on such a number of shareholders would be impossible for
25 plaintiffs who have no way of finding out the names, addresses or phone numbers of shareholders;
26 and

27 131. Making demand on all shareholders would force plaintiffs to incur huge expenses,
28 assuming all shareholders could be individually identified.

1 **COUNT I**

2 **Against All Defendants for Breach of Fiduciary Duty of Loyalty**
3 **(and Candor and Good Faith)**

4 132. Plaintiffs incorporate ¶¶1-131.

5 133. Defendants owed Google and its shareholders a fiduciary duty of loyalty (and candor
6 and good faith). Under this duty, defendants, when faced with a known duty to act, here Google's
7 legal duty to comply with the federal laws related to the importation of prescription drugs, were duty
8 bound to proactively maintain controls and policies designed to ensure Google's compliance with
9 these laws.

10 134. However, defendants breached their duty of loyalty by consciously failing to prevent
11 the Company from engaging in the unlawful acts complained of herein.

12 135. As a result of defendants' disloyalty, Google has been injured. Accordingly, Google
13 is entitled to damages.

14 **COUNT II**

15 **Against Defendants Schmidt, Page and Brin for Corporate Waste**

16 136. Plaintiffs incorporate ¶¶1-131.

17 137. As a result of the foregoing misconduct, defendants have caused Google to waste
18 valuable corporate assets.

19 138. As a direct and proximate result of defendants' corporate waste, Google has sustained
20 and continues to sustain significant damages. As a result of the misconduct alleged herein,
21 defendants are liable to the Company.

22 **COUNT III**

23 **Against Defendants Schmidt, Page and Brin for Unjust Enrichment**

24 139. Plaintiffs incorporate ¶¶1-131.

25 140. By their wrongful acts and omissions, defendants were unjustly enriched at the
26 expense of and to the detriment of Google. Defendants were unjustly enriched as a result of the
27 salary, fees, stock options and other payments they received while breaching their fiduciary duty
28 owed to Google.

141. Plaintiffs, as shareholders of Google, seek restitution from defendants, and each of them, and seek an order of this Court disgorging all profits, benefits, and other improper payments obtained by defendants, and each of them, from their wrongful conduct and fiduciary breaches.

142. As a result of defendants' unjust enrichment, Google has been injured and is entitled to damages.

PRAAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment in the Company's favor against all defendants as follows:

A. Declaring that plaintiffs may maintain this action on behalf of Google and that plaintiffs are adequate representatives of the Company;

B. Declaring that the defendants have breached and/or aided and abetted the breach of their fiduciary duties to Google;

C. Determining and awarding to Google the damages sustained by it as a result of the violations set forth above from each of the defendants, jointly and severally, together with interest thereon;

D. Determining and awarding to Google exemplary damages in an amount necessary to punish defendants and to make an example of defendants to the community according to proof at trial;

E. Awarding Google restitution from defendants, and each of them;

F. Awarding plaintiffs the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs and expenses; and

G. Granting such other and further equitable relief as this Court may deem just and proper.

1 **JURY DEMAND**

2 Plaintiffs demand a trial by jury.

3 DATED: November 1, 2013

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on November 1, 2013, I authorized the electronic filing of the foregoing
3 with the Clerk of the Court using the CM/ECF system which will send notification of such filing to
4 the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I
5 caused to be mailed the foregoing document or paper via the United States Postal Service to the non-
6 CM/ECF participants indicated on the attached Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on November 1, 2013.

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